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SENATE RULES COMMITTEE
STATE OF CALIFORNIA

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ROOM 113
SACRAMENTO, CALIFORNIA

WEDNESDAY, APRIL 20, 2005
1:36 P.M.

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, APRIL 20, 2005

1:36 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

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APPEARANCESMEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

EVAN GOLDBERG, Consultant to DEBRA BOWEN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

DALE T. GELDERT, Director
Forestry and Fire Protection

BOB WOLF, President
CDF Firefighters, Local 2881

DYLAN STUTE
Sacramento Resident

TERRY McHALE
Aaron Read and Associates

DAVID BISCHER, President
California Forestry Association

WES COCHRAN
State Fire Marshals Union

1 TIM FRIES

CAUSE - Statewide Law Enforcement Association

2 RUBEN D. GRIJALVA

3 State Fire Marshal

4 CHRISTY BOUMA

5 California Professional Firefighters

6 BOB RAYMER, Technical Director and Staff Engineer

California Building Industry Association

7 LEE ADLER

8 Structural Engineers Association of California

9 MATT WHEELER

10 California Building Officials

11 TONYA L. HOOVER, Fire Marshal

12 Moraga-Orinda Fire District

13 KURT COOKNICK

American Institute of Architects, California Council

14 ROSE CONROY, Fire Chief, City of Davis

15 League of California Cities, Fire Chiefs Department

16 MIKE DOBSON, Fire Marshal

17 Sacramento Metropolitan Fire District

Sacramento Valley Fire Prevention Officers

18 SUSAN H. HILDRETH

19 State Librarian

20 DANIS KREIMEIER, President

21 California Library Association

Director, Yorba Linda Public Library

22 JEFF FROST, Legislative Advocate

23 California School Library Association

24 PAYMANEH MAGHSOUDI, President

25 Library of California Board

Director, Whittier Public Library

26

27

28

MIKE DILLON

Appearing on Behalf of Himself

ANNE CAIN, Director

Contra Costa County Public Library

KAREN DYER

California Association of Library Trustees and Commissioners

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: We have three appointees today from the Governor for consideration. The first will be Dale Geldert, Director of Forestry and Fire Protection.

You came well armed.

I'm going to be leaving here very shortly. Nothing personal, but your boss called.

I just want to ask you a question before you start, then you can do whatever you wanted to do.

What's the policy and the enforcement on old growth within the Department of Forestry right now?

MR. GELDERT: The policy is supporting maintenance of maintaining old growth. That one is principally through our THPs, through our Timber Harvest Program, and through our field reviews and assessments, working with other agencies.

We recognize that as a very important piece of our natural resources.

CHAIRMAN PERATA: That's good, because I had a bill, not that I want to personalize this, but I had a bill. And the Department had taken a pretty strident position in opposition.

I would encourage us to work together when we do that this time around.

MR. GELDERT: We will do that.

CHAIRMAN PERATA: Now you may just say whatever you'd like.

[Laughter.]

MR. GELDERT: I hope that's the toughest question.

Chair Perata, Members of the Committee, staff, my name is Dale Geldert. I am currently the Director of CDF.

Before I actually start, I'd like to introduce my wife, Rita Geldert, who is in the audience. Rita is currently the City Manager of the City of Vista, and has been a city manager for many years.

Rita has a habit of -- she has a red pen, that when she sits at the dais with the council, and if a staffer does something wrong, Rita moves her red pen. So, I'd appreciate as I'm answering questions, if you see Rita pull that red pen out, let me know cause I'll know I'm going in the wrong direction.

One other thing I'd like to start with is that I noticed in this morning's news, actually our public information officer come rushing into my office and said, "Chief, Chief! Did you know that the Pope was a former member of CDF?"

And so we looked at the news releases. Sure enough, it says CDF, but it's a Christian organization. So, if you hear that the Pope was a former member of CDF, that's not true.

SENATOR ASHBURN: Tell yours.

SENATOR BOWEN: You know, we have a very special new Pope. He's a German shepherd.

[Laughter.]

MR. GELDERT: You beat me.

1 SENATOR ASHBURN: I heard it earlier, and I
2 thought it worthy of repeating. Very good.

3 MR. GELDERT: I am a former fire chief. I'm
4 retired. I've grown up in the Fire Service. That's my
5 background.

6 My principal skills are public administration,
7 management and fire services.

8 I'm very pleased to be here. I'm very honored
9 that the Governor appointed me. In fact, I was quite surprised.

10 My reason for being here is probably quite
11 important. That is, I was sitting on the couch watching the
12 fire season of 2003. And I'd jump off the couch because I was
13 getting excited about the fires, and I wanted to do something,
14 and I wanted CDF to get help, more help, and I wanted to help.
15 And my wife would say, "Sit down." And I sat down, then I'd
16 jump up again, and she'd say, "Sit down," so I'd sit down.
17 And finally she said, "Either stay up and do something, or sit
18 down and shut up."

19 So, I sent a letter to the Governor, and that's
20 the reason I'm here today, is because of that. I'm not here for
21 monetary reasons or any titles. I'm here to help.

22 And that's what I intend to do, provide new and
23 different leadership to CDF, management skills, public
24 administration skills, and make sure that we operate as a
25 team.

26 CDF currently today is the largest fire
27 department in the world, and it's the best fire department in
28 the world. And one of the things that is unique about CDF is

1 that it has utility beyond -- probably beyond any other agency
2 or department in the state, in that every one of our members do
3 multiple jobs. And for that, I believe that we are one of the
4 pillars of the state, and one of the pillars of society.

5 Every time we're called, we respond. Last year,
6 we responded to about 350,000 calls. When we respond, it can be
7 a combination of the foresters, the firefighters, or even my
8 staff. We all, we say Turn Two to incidents.

9 A forester could be a forester one day, and could
10 be a firefighter the next day, an incident commander the next
11 day, or teaching hazardous materials. Even to the extent that
12 my secretary, Carol Forrest, is qualified on the fireline and
13 the finance staff. So if necessary, Carol could be called out
14 to a fire. And that's why CDF is such a great department.

15 And it's a team. And it's more than a job to CDF
16 people; it's a life. And we dedicate ourselves to that.

17 So with that, I'll answer any questions.

18 SENATOR BATTIN: Thank you very much.

19 Do we have any supporters? Please come up and
20 identify yourself.

21 MR. WOLF: Hello. My name is Bob Wolf. I have
22 the honor of being the President of CDF Firefighters, Local
23 2881, and I represent 5,000 men and women who are the rank and
24 file firefighters of CDF.

25 It's my distinct honor and privilege to come
26 before you today and ask you that you unanimously confirm, or
27 vote to confirm, Chief Geldert. Chief Geldert has presented
28 dynamic vision. He understands the issue that are critical to

1 CDF, the citizens of California, and I believe the employees.

2 I think that he's already started off making some
3 very good positive changes to the department that has been
4 viewed by all of the employees as extremely positive.

5 I happen to personally like him as a man, and he
6 has really shiny shoes. And I think that's a positive point to
7 consider.

8 [Laughter.]

9 SENATOR BATTIN: Any other witnesses in support?

10 MR. STUTE: Thank you, Vice Chair Battin,
11 Committee Members. My name is Dylan Stute. I'm a resident of
12 Sacramento, a frequent visitor to this building. I come so
13 often I live here.

14 I'm present to speak on Director Geldert's
15 behalf. And if I may, I'd like to read a brief statement.

16 It is a pleasure and honor for me to lend my
17 personal support to the nomination of Dale Geldert to head the
18 Department of Forestry and Fire Protection.

19 I have been a close friend of Dale and his family
20 since his days as Oceanside Fire Chief, and I can state with no
21 reservation whatsoever that he performs every task that comes
22 his way with the highest levels of integrity and
23 professionalism. You will not find a more dedicated, hard
24 working, and selfless public servant than Dale Geldert.

25 Additionally, I am grateful to him for his
26 insistence in the pursuit of my personal goals. In particular,
27 I credit him for providing me with wise counsel as I completed
28 several of my endeavors as a Boy Scout, and motivating me to

1 participate in Boys State tryouts during my junior year of high
2 school.

3 On a lighter note, he is one of the few people
4 with whom I can have a lively, energetic discussion about
5 politics without getting bored or tired.

6 I am confident that he will provide the strong
7 leadership the department needs and deserves, and that he will
8 serve the people of California with the utmost distinction.

9 Please put your trust in Dale today and allow him
10 to proceed with his firm commitment to help move California
11 forward.

12 Thank you.

13 SENATOR BATTIN: Thank you.

14 MR. McHALE: Terry McHale with Aaron Read and
15 Associates.

16 About 25 years ago, Mr. Read tried to move
17 legislation which would mandate that the Director of CDF be a
18 fire chief. And I think over the years, the ideal fire chief
19 that we would want for CDF is the one represented here today.
20 He's a fiery leader. He's also a great strategist. He's
21 someone who opens his door to all interested parties, and he's a
22 real gentleman.

23 We're very, very proud to support him. Thank you
24 very much.

25 SENATOR BATTIN: Thank you.

26 MR. BISCHER: Senator Battin, Members of the
27 Committee, my name is David Bischel. I'm President of the
28 California Forestry Association. We represent over four million

1 acres of private industrial forest landowners in the state, as
2 well as 90 percent of the primary manufacturers of the natural
3 wood products that each one of us uses everyday.

4 I'd like to express our strong support for Dale
5 Geldert for confirmation as Director. He clearly has
6 unquestioned experience in the wildland fire arena, has
7 demonstrated an excellent capability as administrator. And his
8 term on the Board of Forestry has also given him breadth of
9 knowledge about forestry issues and the importance of the
10 working forest to the State of The California.

11 Thank you.

12 SENATOR BATTIN: Thank you.

13 MR. COCHRAN: I am Wes Cochran. I'm with FEMSA,
14 State Fire Marshals Union reps.

15 We're here in support of you.

16 I know that he has worked in the past with
17 different unions, and I think that he will help the State Fire
18 Marshals' employees as well as the CDF employees.

19 We fully support him.

20 SENATOR BATTIN: Thank you.

21 MR. FRIES: Tim Fries on behalf of CAUSE,
22 Statewide Law Enforcement Association.

23 We look forward to working with him some more.
24 We have the State Fire Marshals in our unit, and also the
25 support services over at the Conservation Corps.

26 SENATOR BATTIN: More support?

27 Is there anyone in opposition?

28 Questions? Senator Bowen.

1 SENATOR BOWEN: Thank you.

2 Just let me say to everyone who's here today that
3 if I'm not applauding, it's because I was stung in the palm of
4 the hand by a yellow jacket. So, I'm not applauding today.
5 It's not personal.

6 Senator Perata wanted me to ask how CDF is
7 responding to Sudden Oak Death Syndrome? It's a huge issue in
8 many of our areas.

9 MR. GELDERT: Thank you.

10 Before I start, let me just preface one thing.
11 I'll tell you the truth consistently. If I don't know
12 something, I'll tell you that, too, so with that.

13 Sudden Oak Death, or SOD, it's a -- it is a
14 significant problem. When I was on the board, we were just
15 beginning to work with the oak and oak woodlands.

16 Currently today, our Chief Deputy Director of
17 Resource Management is the Task Force Chair for the SOD team in
18 California. And he's been working on that for several years, so
19 we're directly involved, as well as our staff is involved, on
20 the committees addressing it.

21 Working with the board, we've -- I think we
22 currently have about 14 counties quarantined, and they seem to
23 be doing fairly stable right now. We have -- oh, I should say
24 Chief Deputy Director Stanley and his committees have gone out
25 into the public. We've done public education, training. We've
26 addressed the fire issues and the landscape, and talked to local
27 communities and local governments.

28 So, we're extremely involved in the SOD issue.

1 SENATOR BOWEN: My interest in talking to you
2 today is primarily about money. From my very first months here
3 in 1993, I started working on fire suppression and forest
4 management issues.

5 And I think we are still seeing a deficiency bill
6 coming through at the end of the year to deal with the cost of
7 firefighting during the year. And one of the questions is
8 whether you think there's any way we can -- I know you can't
9 predict what's going to go up in smoke, or whether it's going to
10 be black smoke or white smoke.

11 [Laughter.]

12 SENATOR BOWEN: But I think we consistently
13 underbudget.

14 Is there any way to get a better handle in the
15 budget on what likely firefighting costs are going to be?

16 MR. GELDERT: The answer to that is yes.

17 First of all, we are -- we have -- we have had
18 some discussions with the LAO. I think that's really necessary
19 before we go too far.

20 And the other one is, we've had discussions with
21 the Department of Finance. And we're in those discussions right
22 now, looking at our budget and our deficiencies as we always get
23 to the end of the year, and how to address now.

24 I think the answer is truth in budgeting. We
25 just need to get our budget down, tell the truth. And if we're
26 short and there's no more money, we'll just do the best we can.
27 And if we can get some more money then we will.

28 So, we'll be working with the LAO, Department of

1 Finance, and the Governor's Office on those issues.

2 SENATOR BOWEN: Second question, and it's really
3 probably the place where I think we have the greatest policy
4 challenge, is how we deal with the need to do veg management and
5 fuels reduction, so that in the long run, you're budgeting a
6 lower amount for suppression and fire management and
7 catastrophic loss.

8 I looked at the material that I got, and hadn't
9 really thought about what we're budgeting. But apparently, we
10 approved \$39 million in Prop. 40 bond funds for fuel reduction
11 activities in the Sierra Nevada this year. And I'm told that
12 the department is seeking an additional 3.8 million for fuels
13 reduction in Southern California.

14 That sounds like a lot of money, but given that
15 the estimated cost of a special election to counties is 70
16 million, 39 million plus 4 million is really a small amount.

17 And I think more importantly, I can't see, from
18 what I know about what really happens in forest management, how
19 could possibly make a dent in the problem with that kind of
20 funding.

21 Can you respond to that?

22 MR. GELDERT: Yes. A little background.

23 The fire service of CDF has actually four major
24 programs, but in all our programs, the overshadowing goals are
25 proactive service and reactive service.

26 Local government found out many years ago that if
27 you put more money into the proactive, you save it on the
28 reactive side. The problem though is, how do you say that we're

1 going to not burn and not spend money? And so, it's very
2 difficult when budget times come not -- it's easy to take the
3 money off the proactive side, or the fire prevention side, or
4 the vegetation management side, and just leave it to the
5 suppression side. But in reality, that just costs us money.

6 So what are we doing? The Prop. 40 money is for
7 the Sierra Nevada areas. And we are working with the Fire Safe
8 Councils, and what we call CWPP, Community Wildland Protection
9 Planning, and other local groups, and the Conservation Corps.
10 And we're working there for vegetation removal.

11 In the southern area, we also are working with
12 the Fire Safe Councils and the CWPPs, and we're working with
13 groups called MAST and FAST. They're groups that are federal,
14 state, and local, and we're removing the vegetation down there.

15 But even that brings a little bit of a problem,
16 because now, as we remove the vegetation, we have a biomass
17 problem.

18 So, it doesn't just begin and end with clearing a
19 piece of property. It's adjusting the types of fuels, the
20 amount of fuel, how it's going to be treated when it's taken
21 out.

22 And most important is, are we actually going to
23 put the fire prevention or the proactivity in the field to do
24 that. And that's my plan, is to do that. My plan is to put
25 more in the proactive field and try and reduce the loss of
26 lives, and property, and our natural resources.

27 SENATOR BOWEN: I'm well aware of the biomass
28 problem, for a variety of reasons, including having two acres.

1 Is \$40 million anywhere close to enough to make a
2 dent in the Sierra Nevada? And if not, what's your view on
3 where and how we should seek additional funding?

4 And I probably have tipped my hand in the second
5 part of that question.

6 MR. GELDERT: As an administrator and as a fire
7 chief, I've never turned down money from anybody. And whenever
8 asked if I need more, the answer is, of course.

9 SENATOR BOWEN: But what can we realistically
10 expect is going to get done in the Sierra Nevada to contain the
11 problem a little bit? What's actually going to happen if we
12 spend \$40 million? What kind of results?

13 MR. GELDERT: We're going to do a couple things.
14 One is, we're bringing together coalitions to work on this.
15 We're educating. We are -- we are finding what programs work
16 and don't work.

17 It's something -- we always have to start
18 someplace. And I think that a little slower start sometimes is
19 better than throwing a whole bunch of money at something when we
20 don't know what we're doing. And I think that that's what that
21 Prop. 40 money is going to do.

22 We already know we have clearinghouse now, and
23 we're using the state Fire Safe Councils. We already know that
24 we're using the CCs out in the Tahoe Basin, and we also know
25 that the Fire Safe communities are being encouraged by us by
26 working with them.

27 So, we have to start at Step One. That's Step
28 One.

1 Step Two is, if it works, or if it doesn't work,
2 make a change, and then seek the funding appropriate to those
3 changes.

4 SENATOR BOWEN: Are you seeing any potential
5 source of funding to deal with thinning and biomass?

6 Two places that I'm aware of where we could spend
7 money are, one, general fund, and two, a logging method that
8 allows the take of some larger timber to finance the removal of
9 otherwise uneconomic activities.

10 MR. GELDERT: The fields management is one area
11 that -- I would say on the highest level, starting at the
12 federal level, is the Healthy -- is the President's action on
13 the forests. There's going to be money and support coming from
14 that.

15 I think if we posture ourself with good programs
16 here, with data and science, that we're going to be eligible and
17 maybe get a significant amount of the money and resources that
18 come out of that.

19 SENATOR BOWEN: What can we do to help you get as
20 much of that federal money as we're entitled to? And I'm sure
21 that that's more than what we're getting.

22 MR. GELDERT: I think working with your staffs,
23 and I'll have my staff work with your staffs. We'll work with
24 the LAO and we'll work with the Department of Finance, and the
25 Governor's Office, and we'll come up as a team.

26 I really think that that's always been one of my
27 themes is, we need to work together as a team on these things
28 and come forward. Work out the little bugs as we get there, and

1 then go forward.

2 Then I think that's what we can use help on, is
3 help on that team.

4 SENATOR BOWEN: Are you having issues with air
5 board on prescribed burning?

6 MR. GELDERT: Prescribed burns, yes, of course.
7 They have some legitimate issues, and we have legitimate issues.
8 And we want to put smoke in the air, and they don't want us to
9 put smoke in the air. It's in cross purposes.

10 Prescribed burning, prescription burns are really
11 important to us, but they do have some inherent dangers. For
12 example, I would never put a prescribed burn in the bark beetle
13 in San Bernardino, you know, but there are some areas that, in
14 the lower savannah or the brush areas, that it's very -- it's a
15 very good plan.

16 So, our staffs go into the field. We work with
17 all the agencies, Fish and Game and all of them. So, I would
18 say that the air control is -- people have been very fair, very
19 honest. And if we put forward a good prescription, they've
20 supported us.

21 SENATOR BOWEN: My final question has to do with
22 an issue that's just been incredibly contentious and difficult
23 in the Legislature because it's a north-south issue.

24 I know you're from Oceanside, so you're going to
25 be dealing with this issue.

26 But there's a great concern that the fire season
27 as people know it in some parts of California doesn't really
28 accurately reflect what happens on the ground in Southern

1 California, particularly given the bark beetle problems and the
2 risk that we have there.

3 What's your recipe for solving that problem
4 without creating the state version of World War II, or
5 re-establishing Stan Statham's bill that would divide California
6 into three states. Which I think, from north to south, were
7 Logland, Fogland, and Smogland.

8 [Laughter.]

9 MR. GELDERT: I need to compose myself. I don't
10 know which one to support.

11 SENATOR BATTIN: You've got three So. Cal
12 Members.

13 SENATOR BOWEN: Count your votes.

14 MR. GELDERT: First I want to address Southern
15 California.

16 I think, again, sometimes we as administrators,
17 and I mean myself, we look at issues -- we look at a battle that
18 -- we go to sea with a tugboat; we should be going to sea with a
19 battleship. And we should go to the sea with a flotilla and not
20 by ourselves and get shot out of the water.

21 And these are major issues that we need to bring
22 the whole state together. And there's issues even bigger than
23 that. For example, we got this rain this year, so everybody
24 feels pretty good about this, but --

25 SENATOR BOWEN: That rain's going to grow a lot
26 of vegetation.

27 MR. GELDERT: No, this is probably one year in a
28 15-year drought we're going to have, or a 20-year drought.

1 So, we can't say, "Oh, good. Now we've got this
2 fixed."

3 Another issue is, we have to work with local
4 governments.

5 CHAIRMAN PERATA: Let's make sure these L.A.
6 people are listening to you.

7 [Laughter.]

8 MR. GELDERT: We need to work with local
9 governments. This is a California problem, not a state problem.
10 And we need to work together on programs. And some of those
11 programs, we have to put a concentrated effort in things like
12 wildland fire codes and bring those up to date. Building codes,
13 work with the planners. We need to work with the vegetation
14 programs, pre-fire planning, engineering and inspections.

15 And we need to go out, and we need not just send
16 mail out to people. We need to go out and educate. We have to
17 educate, educate, educate. And one firefighter standing in
18 front of one home will do a thousand times more good than
19 sending 1500 pieces of paper out. And that requires all of us
20 working together. We can't be at cross purposes with local
21 government when we're doing that. We have to work as a team.

22 And the Fire Service is the team in California.
23 And I think it'll work. I think we can do it.

24 SENATOR BOWEN: I'm looking forward to working
25 with you. I'm really concerned that the kind of funding that we
26 have for some of these programs really is -- it's a dinghy
27 instead of a flotilla.

28 SENATOR BATTIN: Senator Ashburn.

1 SENATOR ASHBURN: You've been there awhile. What
2 is your assessment of the department?

3 MR. GELDERT: My assessment is, it is. And as
4 you know, when I worked with the State Department I traveled
5 around the world for the Secretary of State, and I visited many,
6 many fire departments as well as my staff. So, I can speak not
7 just from sitting in here or from Oceanside, I can speak on a
8 geo-basis. This is the finest fire department in the world.

9 Do we have to make change? Yes. There isn't any
10 organization that doesn't need change. We need change. And
11 that change is a paradigm shift in two or three different areas.
12 One of them is in pre-fire management. One is in the way we,
13 our management staff, do we do the job? We do it better than
14 anybody. Can we improve? Yeah, we sure can.

15 SENATOR ASHBURN: I would say that the reputation
16 of the department that you're going to lead has been tarnished,
17 that integrity has come into question, and that you have an
18 awesome responsibility in restoring first the integrity of the
19 leadership of the department.

20 That's why I'm asking for you to be forthright in
21 assessing how deep and to what extent you're going to need to
22 take action in order to immediately restore integrity within the
23 department.

24 CHAIRMAN PERATA: Could I ask the nature of that
25 concern? I'm not aware.

26 SENATOR ASHBURN: Well, I mean, the Chief and I
27 had a conversation about this. And there have been many public
28 revelations about the past leadership of CDF. There have

1 been -- I mean, unless you want me to detail --

2 CHAIRMAN PERATA: No, I just wasn't aware of it.

3 SENATOR ASHBURN: These were publicly
4 acknowledged.

5 I'm not even asking the Chief to agree with me
6 that the reputation has been tarnished.

7 The question is, is there room for improvement?
8 And what steps are you going to take, if you even agree with the
9 premise, to restore that integrity?

10 MR. GELDERT: I need to set a premise for that.
11 And that is, CDF has -- CDF, it has not been an organization for
12 a long time. It's really transcended that. It's an institution.

13 It has values that are extremely high. It has a
14 history. It has a set of rules. It's a family. It's more than
15 just a fire department, or just a resource management, or just a
16 fire marshal's office, or just the staff. It's a life to
17 everybody.

18 And what I intend to do is dust that off. And
19 we're going to make some changes. We have to grow as times
20 grow. Things change, we have to change, and we're going to
21 change.

22 Some of those changes I've made already. Some
23 I'm just waiting to see if I'm confirmed to do the others.

24 [Laughter.]

25 SENATOR ASHBURN: That's always a good plan.

26 MR. GELDERT: So, I'm conscious in that
27 respect.

28 SENATOR ASHBURN: Well, I think Senator Bowen

1 identified a critical issue for all of us, and that is the
2 management of the public lands so that we minimize the
3 destructive nature of that which will occur. You know, the fire
4 is going to happen. And if we can reduce timber -- so, I just
5 want to follow up.

6 The question was about the Sierra Nevada in
7 particular, which is all federal land. The importance of the
8 President's initiative and the opportunity that you see there,
9 it seems to me that if we can work with the federal government,
10 and if the President has made that a very high priority, that's
11 an opportunity for California to maximize our effort as well.

12 MR. GELDERT: Currently, I sit as the Chair of
13 the Fire Alliance, so I sit with the BLM, and the Forest
14 Service, many other agencies. And as the Chair, I've somewhat
15 changed the agenda for the coming year. Not that it was bad in
16 the past; it wasn't.

17 But I, as I said before, I really believe that if
18 you've got big problem, you need a big team. And that means all
19 the players have to be there.

20 And we're addressing that on a much larger scale,
21 a statewide scale now, not any better, but just different. Just
22 a different way to do it.

23 Let me just follow up on CDF. I think sometimes
24 the perception of any large organization can get tweaked a
25 little. I happen to think that internally, it's a fantastic
26 organization. It's just fantastic.

27 And I don't pretend to know everything about it
28 because I haven't been there long enough. But it is a great

1 organization.

2 SENATOR ASHBURN: And let me tweak my comments as
3 well, because I don't want anyone to misinterpret a criticism
4 for the people who perform the service on a daily basis, but
5 there have been leadership problems before, so that everyone's
6 clear where I'm coming from.

7 The only final thought that I have is that you
8 truly are a chief. And I notice that the job description calls
9 you a director. It seems to me that we ought to call you Chief.

10 MR. GELDERT: When I first came -- leadership is
11 an issue in any large organization, especially CDF. And CDF is
12 not the paramilitary. It's a military organization, right from
13 wearing uniforms, to yes or no, sir, and includes saluting.

14 And a military organization needs a military
15 leader. And in the fire service, that's the Fire Chief. I've
16 earned that title as Fire Chief, so that's what they call me.
17 But they do it respectfully.

18 However, when I'm working on the resource
19 management side, I prefer to use the term Director so it's not
20 so confusing and intimidating.

21 SENATOR ASHBURN: You're going to be my Chief. I
22 think you're terrific.

23 SENATOR BATTIN: Senator Cedillo, do you have any
24 questions.

25 SENATOR CEDILLO: I'm prepared to move it.

26 SENATOR BATTIN: I have just a couple, actually.

27 You're increasing staffing down in three Southern
28 California counties, Riverside included, which is what I

1 represent. How do you think that's going to help in terms of
2 fire fighting?

3 Of course, our point of reference is when we had
4 the blaze in all Southern California.

5 MR. GELDERT: A little premise. Traditionally
6 when we put fire engines on, it's for the reactive side, as I
7 said earlier. CDF has two sides, proactive and reactive.

8 And rather than waiting for the fires to come to
9 the engines, the staff and I have come together with a plan that
10 is -- I won't say it's unique, but I'll say it's been a long
11 time since it's been done.

12 And we're going -- we put a program together
13 where we're going to go into the field. These units are not
14 going to sit in the stations. We're going into the field, and
15 we're going to make inspections.

16 What's really good about this and neat about this
17 is, we're going to do it with science. And that's where the
18 paradigm shift has to come on many of the things we do. We need
19 more science.

20 In other words, we're going to send the engines
21 out under the GIS mapping system, and we're going to map what we
22 do. We're going to put the data down: who we talked to, what
23 the field facts were, and what we cleared, and all the
24 violations.

25 Then we're going to overlay that, following the
26 fire season, as to what fire starts -- how many fire starts were
27 in that area, how many acres did we lose.

28 And then we will have for the first time ever the

1 ability to say what fire prevention does. As opposed to just
2 saying, "We know it's going to save property and lives," we'll
3 be able to say, "Look, we did this."

4 Now, it's not going to be perfect because it's
5 our first time through it, but we're going to put them in those
6 three counties. And we're going to go out and touch as many
7 acres as we can. And these aren't going to be helter-skelter.
8 We're going to try and do it on a landscape basis so it has some
9 meaning to it.

10 Then we'll get back together and we'll do an
11 assessment with our science section. Chief Stewart will do
12 that, and his scientists. And we're going to layer that, talk
13 about it. Next year we're going to improve that. We're going
14 to go out and do the same thing.

15 Eventually -- you've got to start someplace.
16 Eventually we'll move through the state with the ability, with
17 the resources, of course, when we have the resources. And we'll
18 -- we will be able to assess our fuels, our fire risk, our
19 property risk, our life risk, our natural resources risk, our
20 watersheds, our aquatics, you know, our terrestrial habitat and
21 wildlife.

22 So, it'll come together. And we won't just be
23 sitting and telling you, "We think fire prevention works."
24 We're going to be able to lay the data in front of you.

25 SENATOR BATTIN: That's very impressive. I'm
26 glad to hear that.

27 Second thing is, I represent the San Jacinto
28 Mountains. And I have flown over it a couple of times. Last

1 year, I flew over it, and the pilot was saying, "It's not the
2 brown trees that you should worry about. It's the gray trees,
3 because they're so dead they're not coming back." And the bark
4 beetle infestation is really causing havoc around region and in
5 the county.

6 You mentioned it a second ago when you were
7 talking about the rain, but what are our projections this next
8 year for the bark beetle?

9 This is a problem that has really significantly
10 impacted the mountains and the mountain communities. It was a
11 serious problem, but it's just getting worse.

12 MR. GELDERT: The latest information I have, and
13 I can't be too accurate -- I mean, I'm probably not as accurate
14 as I'd like to be on this, is that it has slowed -- the bark
15 beetle damage has slowed down.

16 SENATOR BATTIN: Because of the rain.

17 MR. GELDERT: Right.

18 SENATOR BATTIN: And sap in the trees.

19 MR. GELDERT: Exactly.

20 And that is significant, but it's more
21 significant if we get that -- those dead trees out of there so
22 we don't have a conflagration as it goes through.

23 So, it's really two issues. One is dealing with
24 the bark beetle, and the other one is dealing with the dead,
25 diseased and dying trees. That just lays on the ground.

26 SENATOR BATTIN: You have a tall task there. You
27 fly over it, you see a lot of gray trees. I mean, there's a lot
28 of dead trees up in the mountains right now.

1 MR. GELDERT: My wife and I, we have a family
2 cabin up in Big Bear. And I'm at the point now where I don't
3 even like to look out the window of the car. I don't want to
4 drive up any more. I say, "Rita, tell me the color of the trees
5 we're in right now."

6 So, I recognize it personally and professionally
7 that that's a big job we got to do, and it's not going to get
8 done tomorrow. It's going to be a long-range issue.

9 SENATOR BATTIN: Thank you very much.

10 We have a motion.

11 Senator Cedillo, do you have any questions?

12 SENATOR CEDILLO: No, I think he's answered them
13 all. I share all your concerns about your region, your area.

14 I was a little concerned at first when you
15 mentioned that you would budget, and come back if you're under
16 budget.

17 I think you should budget truthfully, honestly,
18 not be shy. This is not something we can afford to
19 under-budget. The costs of that are incredible.

20 But then the breadth of your discussions assured
21 me that I'm glad to see that you will take more money, and that
22 you recognize that this is one area where we cannot
23 under-budget. It's that simple.

24 And you should not be shy about that. It's an
25 important service, a tremendous responsibility for us over that
26 area.

27 So, I'm satisfied with your answers and move the
28 nomination.

1 SENATOR BATTIN: It's been moved by Senator
2 Cedillo. Would the Secretary please call the roll.

3 SECRETARY WEBB: Senator Ashburn.

4 SENATOR ASHBURN: Aye.

5 SECRETARY WEBB: Ashburn Aye. Senator Bowen.

6 SENATOR BOWEN: Aye.

7 SECRETARY WEBB: Bowen Aye. Senator Cedillo.

8 SENATOR CEDILLO: Cedillo Aye.

9 SECRETARY WEBB: Cedillo Aye. Senator Battin.

10 SENATOR BATTIN: Aye.

11 SECRETARY WEBB: Battin Aye.

12 SENATOR BATTIN: Four to zero, congratulations to
13 you.

14 MR. GELDERT: Thank you.

15 [Thereafter, SENATOR PERATA
16 voted Aye, making the final
17 vote 5-0 for confirmation.]

18 SENATOR BATTIN: Our next nominee is Ruben
19 Grijalva for State Fire Marshal.

20 Mr. Grijalva, we're going to give the room a
21 moment to get settled here.

22 Mr. Grijalva, thank you very much for coming. Do
23 you have an opening statement or remarks you'd like to make?

24 MR. GRIJALVA: Yes, thank you very much.

25 I'm very pleased to be here today, and very
26 honored to have been appointed by Governor Schwarzenegger to
27 this position, and equally as honored to be before the Senate
28 confirmation committee here.

1 Before I begin, I would like to introduce my
2 family that is with me today.

3 SENATOR BATTIN: Certainly.

4 MAR. GRIJALVA: My wife of nearly 30 years, Judy
5 Grijalva, is with me.

6 I have four sons, two of which are with me today.
7 My oldest son Ruben is with me, and my youngest son Paul is with
8 me.

9 I have two other sons, David and Timothy, who
10 could not be here. They're both working today, and I encourage
11 them to work.

12 [Laughter.]

13 SENATOR BATTIN: Good for you.

14 MR. GRIJALVA: Well, I've been in the business of
15 public safety now for about 30 years. Started my career with
16 the City of Sunnyvale, Department of Public Safety, where I was
17 both -- worked in the functions of police and firefighting.
18 Spent 16 years with the City of Sunnyvale and then moved on to
19 the City of Palo Alto and spent 14 years there.

20 During my time as-- in Sunnyvale, I spent five
21 years as a fire marshal for the city, which is relevant to the
22 job that I'm seeking here. During that time, I worked very
23 closely with the industry and the environmentalists, which was
24 in the heart of the Silicon Valley.

25 And it was during a time when there was a lot of
26 major issues going on related to hazardous materials. Some
27 leaking underground storage tanks had occurred in south San Jose
28 which were believed to have caused birth defects. And so, we

1 worked together as part of a coalition to develop regulations to
2 address the problem of leaking underground storage tanks.

3 That issue, those regulations, those local
4 regulations, became a model. At the time, Assembly Member Byron
5 Sher took those regulations, and brought them to the state, and
6 adopted them, and they became the State Underground Tank
7 Regulations.

8 Subsequent to that, we also had a provision there
9 where we adopted some community right-to-know legislation. It
10 was the first community right-to-know requirements in the United
11 States. Then Assembly Member Maxine Waters took those
12 provisions from local government there in Santa Clara County and
13 brought them to the state, and they became the State Community
14 Right-to-Know legislation.

15 I think the key part about that was that in doing
16 those kinds of things with very controversial issues at that
17 time, we worked very closely with business, with industry, with
18 the community, with local and regional government to arrive at a
19 consensus.

20 And that is one of my goals. That will continue
21 to be one of my goals if I am confirmed as the State Fire
22 Marshal, and that is to continually involve the stakeholders in
23 any issue that the State Fire Marshal's Office deals with, and
24 ensure that they have adequate input and participation in any
25 process that we develop to arrive at a consensus before we
26 develop any regulations or bring anything in terms of
27 legislation.

28 In addition to that, I've had some significant

1 experience in dealing with negotiations during my time in
2 Sunnyvale. In the law enforcement side, I worked as a hostage
3 negotiator. When I moved over to the fire side in Palo Alto, I
4 worked as the Assistant Chief and the Fire Chief, working with
5 labor in a community that had binding arbitration, and have been
6 very successful in, again, arriving at a consensus in solutions
7 to problems.

8 That, again, is one of my goals, is to always
9 look for solutions and find solutions to problems that our
10 office will be facing.

11 So, I also have provided you a brief statement of
12 my goals. I'm not going to repeat those for time's sake, but
13 that's my brief statement.

14 I'm open to any questions that you might have.

15 SENATOR BATTIN: We'll start with asking folks
16 who are in support of you to come up and testify.

17 MS. BOUMA: Mr. Chair, Members of the Rules
18 Committee, my name's Christy Bouma. I'm representing the
19 California Professional Firefighters.

20 It's my pleasure to come before you and ask that
21 you support the confirmation of Mr. Grijalva.

22 In my tenure with the California Professional
23 Firefighters, we both have an impassioned position as it relates
24 to the Fire Service and the safety of the public that we serve.
25 And we have been able to work together to bring forward
26 consensus, ideas that are good for the State of California in
27 protecting the citizens of this state.

28 So, I'm pleased to ask you to confirm this man.

1 He will be good for the Fire Service and good for California.

2 SENATOR BATTIN: Thank you.

3 MR. RAYMER: Thank you, Mr. Chair and Senators.
4 I'm Bob Raymer, Technical Director and Staff Engineer for the
5 Building Industry Association.

6 We strongly support the confirmation of Chief
7 Grijalva.

8 I've had the opportunity to work with the Chief
9 and his staff and a rather large group of constituents on the
10 development of California's first set of urban wildland
11 interface fire safety regulations.

12 I bring this up because the group is large and
13 diverse, and it includes cities and counties, building
14 departments throughout the state, the Fire Service, the building
15 industry, product manufacturers, any few of which is difficult
16 to get them to agree on something. The Chief's capabilities as
17 a consensus developer and probably more as a hostage negotiator
18 served us well.

19 I'm pleased to say that the first of two phases
20 of regulations will be going before the Building Standards
21 Commission for adoption in May. That will be California's first
22 set of regs in this area. And the industry's supporting it, and
23 to my understanding nobody else will be opposing it.

24 Once again, we strongly support his confirmation.
25 Thank you.

26 SENATOR BATTIN: Thank you.

27 MR. ADLER: Mr. Chairman and Members, Lee Adler,
28 representing the Structural Engineers Association of California.

1 We are very pleased to add our voice to the
2 support of Chief Grijalva to be confirmed as State Fire Marshal.
3 So, we hope that will be your action today. Thank you.

4 SENATOR BATTIN: Thank you.

5 MR. WHEELER: Good afternoon.

6 Matt Wheeler, representing the California
7 Building Officials. We represent over 300 local building
8 departments statewide.

9 It's not often that you see building departments
10 and fire officials at the same able, and we don't always see eye
11 to eye. But Chief Grijalva has brought us to the table at all
12 times. We've enjoyed working with him over the past couple
13 months, and we hope to continue our work with him.

14 So for that, we come to you with strong support.
15 Thank you.

16 SENATOR BATTIN: Thank you.

17 MR. COCHRAN: Hello. Wes Cochran from FEMSA,
18 the labor on the Fire Marshal's side.

19 I will say that we support the Chief here
20 greatly. He has a very open communication and has already
21 started to make changes with the communications between labor
22 and management.

23 Thank you, Chief, and we support you one hundred
24 percent.

25 SENATOR BATTIN: Thank you.

26 Quite a line.

27 MS. HOOVER: Thank you. My name is Tonya Hoover.
28 I'm the Fire Marshal for the Moraga-Orinda Fire District, 63.5

1 square miles of urban wildland interface, or wildland urban
2 interface.

3 I come before you in support of Chief Grijalva.
4 He has been a supporter of the efforts that we have been taking
5 at local government in fire prevention. He's been a long
6 supporter of all of those efforts, and I look forward to working
7 with him in the future as the State Fire Marshal.

8 SENATOR BATTIN: Thank you.

9 MR. COOKNICK: Good afternoon. I'm Kurt Cooknick
10 with the American Institute of Architects, California Council,
11 here to support Chief Grijalva.

12 The Chief said that he was going to bring in all
13 stakeholders and include their participation. I think that's
14 been very evident in the last couple of months since he took
15 office. He has been incredibly inclusive in every endeavor of
16 the State Fire Marshal's Office. It's something we've come to
17 enjoy and something that we missed for a time prior.

18 We look forward to Chief Grijalva's continuance
19 at that post, and I ask for your support of Chief in this
20 confirmation.

21 Thank you.

22 SENATOR BATTIN: Thank you.

23 You're back.

24 MR. WOLF: Hello everybody. Bob Wolf,
25 President, CDF Firefighters.

26 We strongly support his confirmation. Chief
27 Grijalva believes in firefighter training. Firefighter training
28 saves lives, not only the firefighters but the community that

1 the firefighter protects.

2 We strongly urge you to vote for confirmation.
3 Thank you very much.

4 SENATOR BATTIN: Thank you.

5 MS. CONROY: Good afternoon. My name is Rose
6 Conroy. I'm the Fire Chief with the City of Davis. I'm here
7 representing the California League of Cities, the Fire Chiefs
8 Department.

9 The Fire Chiefs Department of the League of
10 California Cities strongly support Chief Grijalva as the next
11 Fire Marshal. His background, experience, is tremendous. And
12 he does work towards a consensus on issues, so we strongly
13 support.

14 SENATOR BATTIN: Thank you.

15 MR. FRIES: Tim Fries on behalf of CAUSE. We
16 represent all the rank-and-file fire marshals at the state.

17 We've had a really good working relationship with
18 him thus far, and we think his skills as a hostage negotiator
19 will probably come in useful.

20 SENATOR BATTIN: Thank you.

21 MR. DOBSON: Hi. Mike Dobson, Fire Marshal for
22 Sacramento Metropolitan Fire District, also representing the
23 Sacramento Valley Fire Prevention Officers.

24 I've had the privilege to work with Ruben for
25 over 20 years in fire prevention. I want you to know he'll
26 provide what the State of California needs, leadership in this
27 office and building a consensus. And I've seen him work very
28 hard in the code processes through the years to try and find

1 win-win situations for everybody.

2 SENATOR BATTIN: Thank you.

3 Is that it? Anyone in opposition?

4 Questions? Senator Bowen.

5 SENATOR BOWEN: I just have a closing
6 question.

7 SENATOR BATTIN: Senator Ashburn?

8 SENATOR BOWEN: I just have a couple.

9 SENATOR BATTIN: I have one.

10 SENATOR BOWEN: Go.

11 SENATOR BATTIN: Tell us about negotiating the
12 surrender of the largest mass murderer in Santa Clara County
13 history.

14 MR. GRIJALVA: Well, that was an incident
15 involving a person named Richard Farley who worked for a company
16 called ESL.

17 He became infatuated with a woman who worked
18 there. This was in the days before there was stalking laws in
19 California. In fact, it led to the first stalking legislation
20 in California.

21 He was terminated from his employment there for
22 sexual harassment and then followed her around for two years in
23 her life. She joined a 24-hour Fitness; he joined a half hour
24 later. She'd go play softball; he'd be in the stands. He left
25 notes on her car, notes on her home. She'd move, and he'd find
26 her.

27 She got a temporary restraining order to keep him
28 away, and the day before that temporary restraining order was

1 going to be made permanent, he showed up at the place of
2 business with 98 pounds of weapons, including hand guns, and
3 shotguns, high powered rifles, and went on a shooting spree. He
4 shot 10 people; he killed 7, and then held up in the building
5 with 32 people remaining trapped in the building.

6 At the time, I was actually the Fire Marshal of
7 Sunnyvale. And it's public safety, so we're police and fire.

8 I was also trained as a hostage negotiator and
9 showed up with the SWAT Team and the Hostage Negotiation Team
10 and was able to make contact with him, and negotiate with him
11 for five-and-a-half hours before he surrendered for a Togo's
12 Number 26 sandwich and a Diet Pepsi.

13 SENATOR BATTIN: What is a Togo's Number 26?

14 SENATOR BOWEN: I should have held out for one.

15 [Laughter.]

16 MR. GRIJALVA: It's a turkey, ham and cheese.

17 SENATOR BATTIN: Turkey, ham and cheese.

18 MR. GRIJALVA: There was a funny sideline to
19 that.

20 After the event, I received a letter from the
21 President of Togo's with a coupon book for free sandwiches,
22 saying he hoped I enjoyed my next sandwich under a less
23 stressful situation.

24 [Laughter.]

25 MR. GRIJALVA: But he eventually did surrender.
26 There was not another shot fired or another person killed after
27 we arrived and engaged in negotiations. He's now on Death Row
28 in San Quentin.

1 SENATOR BATTIN: That's very impressive.

2 Senator Bowen.

3 SENATOR BOWEN: Now that I'm sufficiently
4 terrified.

5 [Laughter.]

6 SENATOR BOWEN: I noted with alarm in the
7 material -- first of all, let me say it's lovely to have you
8 here. You have a great resume, as did Mr. Geldert.

9 My questions are not about your qualifications.
10 They're about how you intend to tackle some difficult issues.

11 I had noted with alarm that the staffing at the
12 Office of the State Fire Marshal has decreased from 300 to 96
13 employees, and that it is estimated that 80 percent of the
14 managers are currently eligible for retirement.

15 What do we need to do?

16 MR. GRIJALVA: First of all, the staffing number
17 is a little deceptive in that some programs that used to be in
18 the State Fire Marshal's Office, when that number was higher,
19 have moved to other parts of the state. OSHPA, the hospital
20 inspections, some of the responsibilities that went to the
21 Division of State Architect. So, some were transferred out.

22 Some went to -- with the consolidation of CDF,
23 they went into CDF Fire Protection side, the arson-bomb program,
24 state fire training.

25 So, the numbers shrank, but the duties are still
26 being done or performed by other agencies or somewhere else.

27 Now that's not to say that there aren't a lot of
28 challenges. The number of people retiring or able to retire is

1 a significant issue. I have begun looking at developing a
2 succession plan. Actually, when I was first considering the
3 position, I showed up at the office one day and asked for a copy
4 of the succession plan. It didn't exist. And so, I knew that
5 that was something that I would have to do right away.

6 So, CDF is engaging in succession planning,
7 department-wide. The executive team right now is currently
8 forecasting all retirements and vacancies, and engaging in a
9 process to develop a department-wide succession plan.

10 Internally within the State Fire Marshal's
11 Office, we have begun to review our State Fire Marshal's Career
12 Manual so that people that want to progress and move up within
13 the organization know what the requirements are, and what the
14 training is, and what is necessary to get there.

15 Hopefully, we've begun establishing openness and
16 demonstrating leadership in the organization to model that for
17 people who are going to eventually move into positions of
18 leadership.

19 We're encouraging and promoting core values
20 within the organization, such as focusing on customer
21 satisfaction, which is one of the significant things that I want
22 to make a priority in the organization. We're making our
23 managers and supervisors accountable for being teachers,
24 coaches, and mentoring. It's their responsibility to train two
25 or three people to replace them as they retire.

26 We've established a management-labor committee to
27 evaluate the use of employee classifications, and are meeting on
28 a regular basis with labor to try to address this issue.

1 I've been monitoring the morale of the
2 organization. I've been giving a lot of feedback to the
3 organization and focusing on employee retention and job
4 satisfaction. I think if employees know the direction the
5 organization is going -- it's more than just money, although the
6 money is an issue -- but if they know the direction the
7 organization is going, they feel the organization is being led
8 in a manner with integrity, that's going to improve job
9 satisfaction and employee retention.

10 We have been identifying the future challenges in
11 establishing that organizational direction. We have a draft
12 two-year work plan that we're going to be finalizing within the
13 next few weeks and putting out, not only within our organization
14 but to all of our stakeholders, out into the Fire Service and to
15 industries that we work with.

16 We've started to train to the next level of
17 leadership. I've personally initiated what I call Brown Bag
18 Training Sessions where employees can come in during their lunch
19 time and chat about leadership development, organizational
20 structure, listen to examples of what have made leaders in our
21 organization successful. I've had a number of managers within
22 CDF who have volunteered to come and speak about their
23 successes, to train employees to move forward.

24 SENATOR BOWEN: When you finish, could you send
25 your team over to the Senate?

26 [Laughter.]

27 SENATOR BOWEN: Make it to the Assembly first.

28 [Laughter.]

1 MR. GRIJALVA: I'm obviously encouraging
2 professional education and ongoing learning. My staff and I are
3 working to identify employee talents and to make assignments
4 according to where our people's talents lie.

5 And we're also trying to create opportunities for
6 career development, moving people out of positions into maybe
7 positions of uncomfot to stretch them a little bit. Maybe
8 moving them even out of the department, to another department,
9 to do three months with Human Resources or three months with
10 Finance.

11 So, those are some of the ideas that we're
12 thinking about.

13 SENATOR BOWEN: Great.

14 One other question. We had a few weeks ago the
15 appointee to the Office of Oil Spill Response. We talked some
16 about pipeline safety, and you're the other half of the
17 conversation we had that day.

18 Our analysis, or the LAO's report, notes there
19 are couple of reports that were due before you got to the
20 agency. I think one in 1999 and one in 2004, that deal with
21 pipeline leak incident rates, and more importantly,
22 recommendations -- requirements of the office to recommend
23 changes to the Legislature that might be necessary.

24 I'd appreciate it if you could talk a little
25 about your work on pipeline safety, on inspections, and on
26 helping us understand what we need to do as we deal with an
27 aging inventory of pipelines that have potential to cause
28 significant harm.

1 MR. GRIJALVA: It's important to understand the
2 role of the State Fire Marshal in the pipeline safety program.

3 While -- when a release occurs, a spill occurs,
4 we do assist with the investigation of that.

5 The actual responsibility or legislative
6 authority goes to Fish and Game, the Office of Pipeline Safety.

7 Our responsibility is two-fold. One is to, when
8 new pipelines are being installed, to conduct the inspections to
9 make sure they get installed properly. And then after they've
10 been installed, to engage in an ongoing maintenance program
11 inspections, working with the pipeline operators to make sure
12 they're complying with the requirements.

13 Now, many of our requirements come from federal
14 law. In fact, we manage both the interstate and intrastate
15 pipeline programs.

16 In the interstate pipeline program, where
17 pipelines are leaving California and providing fuel to Nevada
18 and Arizona, we work very closely with the Federal Department of
19 Transportation. In fact, they come in annually, and they audit
20 our program to measure the effectiveness of our program.

21 Nine years in a row, we have received the highest
22 possible rating that the Department of Transportation offers
23 with regard to our program. In fact this year, they had some
24 extra money available at the federal level, and they gave extra
25 money to those states that had the highest rating possible. So,
26 our program is going to receive an additional \$200,000 from the
27 federal government grant that we receive every year because of
28 the quality of the program and their evaluation of our program.

1 But basically what we do conduct is, we go out
2 and we conduct two types of inspections. One is a specialized
3 inspection, that is, the installation of new systems; and the
4 other is our standard regular inspection, which is more
5 comprehensive, where we go out and periodically inspect visually
6 the pipelines that are installed throughout the state.

7 Now, it is the pipeline operator's responsibility
8 to visually inspect every mile of their pipeline monthly, and
9 maintain records and reports that, when we come in and conduct
10 our inspection, we review and examine those.

11 In addition to that, by our regulations, they're
12 required to either hydrostatically test or test internally with
13 a device called a PIG that they send through the pipeline, and
14 it measures the integrity of the pipeline itself; it measures
15 the thickness of the walls of the pipeline. So, they do that on
16 a one to five-year basis, and that depends on the risk of the
17 pipeline, the age of the pipeline, the history of leaks from the
18 pipeline, and the risk to the population or the environment.
19 The more sensitive the location, the more frequent the
20 requirement.

21 So, we do a detailed analysis of the company's
22 records. We do an on-site inspection of the pipeline, including
23 the pumping stations, the control facilities. And our
24 regulations are reviewed annually by the Department of
25 Transportation to ensure that they're compliant.

26 And in fact, the state program has been a leader
27 in the nation. Many of the regulations that we put in place for
28 the intrastate pipelines for our state pipelines have been

1 models that have been picked up later by the federal government
2 and put into the federal law.

3 We conduct about -- let me say this. The
4 pipelines are divided into what we call units. A unit could be
5 as little as 10 miles or as much as 100 miles. We inspect on
6 the average about 128 units perfect year, of a total of 177
7 units. So, we inspect about 72.3 percent of the pipeline,
8 approximately, every year. That involves doing inspections with
9 the 84 different operators that do business in California.

10 The operators themselves operate a SCADA system,
11 which is a computerized system that measures the pressure within
12 the pipelines. And so, while it can't detect minor leaks, the
13 SCADA system will detect major leaks.

14 If there's any detection by a SCADA system,
15 they're required by law to report that to the Office of
16 Emergency Services, who notifies Fish and Game, State Fire
17 Marshal, and all the state agencies. And then we respond and
18 cooperate with the other state agencies in conducting those
19 inspections and those investigations.

20 That's generally a description of our program.

21 SENATOR BOWEN: And the reports that were due, I
22 guess, in '99 and 2004? I just was curious.

23 MR. GRIJALVA: I'm actually not sure about what
24 report you're talking about.

25 SENATOR BOWEN: Well, I'm looking at the
26 analysis that we get from the LAO's Office. It references a
27 bill that I assume was carried by then Assemblywoman Juanita
28 McDonald that requires that the State Fire Marshal issue a

1 report that reviews and identifies pipeline incident rates and
2 recommends necessary changes to the Legislature. It was due in
3 1999 and again in 2004. Apparently it just hasn't been done.

4 If it's not a report that is of any value, we
5 ought to take it out of the statute. If it is a report that's
6 of substantive value, we ought to do it and have a look at it.

7 MR. GRIJALVA: There actually is a report done by
8 my office every year that we give to the Department of
9 Transportation. That's part of their evaluation of our program.
10 So, we do have an annual report that does look at releases, what
11 the causes of releases are. I have a few in front of me even.

12 Let's see. In 2004, there were 10 releases, with
13 the majority of the causes being third party damage or external
14 damage, and with the remainder being external corrosion. So, we
15 do an annual report, and maybe our office and I will look into
16 this as soon as I get back, needs to bring that to the
17 Legislature. But we do provide that to the Federal Department
18 of Transportation.

19 SENATOR BOWEN: We'll have a look and see if
20 there's a way to consolidate the reporting requirements so that
21 you're not doing one report for DOT and a different report for
22 us.

23 Thank you.

24 SENATOR BATTIN: Senator Ashburn.

25 SENATOR ASHBURN: Just a comment.

26 Chief, just an apology to you. You were very
27 generous with your time in coming by yesterday and making
28 yourself available so that we could meet and have a conversation

1 ahead of today's hearing. Unfortunately neither of us were able
2 to get together ultimately.

3 But I'm very impressed with your qualifications.
4 Senator Bowen, as she does so well, had the detailed question on
5 pipelines.

6 I don't know about you, I heard more about the
7 pipelines than I really wanted to know. You probably covered
8 the mandatory reporting requirements under the statutes --

9 [Laughter.]

10 SENATOR ASHBURN: -- that probably take us to the
11 year 2020. It sounds pretty good to me.

12 I'll make a motion on your confirmation.

13 SENATOR BATTIN: We have a motion on the floor
14 for confirmation. Secretary, please call the roll.

15 SECRETARY WEBB: Senator Ashburn.

16 SENATOR ASHBURN: Aye.

17 SECRETARY WEBB: Ashburn Aye. Senator Bowen.

18 SENATOR BOWEN: Aye.

19 SECRETARY WEBB: Bowen Aye. Senator Cedillo.

20 SENATOR CEDILLO: Cedillo Aye.

21 SECRETARY WEBB: Cedillo Aye. Senator Battin.

22 SENATOR BATTIN: Aye.

23 SECRETARY WEBB: Battin Aye.

24 SENATOR BATTIN: Congratulations.

25 MR. GRIJALVA: Thank you.

26 [Thereafter, SENATOR PERATA
27 voted Aye, making the final
28 vote 5-0 for confirmation.]

1 SENATOR BATTIN: Maybe with all the fire folks
2 leaving it'll cool off in here a little bit.

3 The next nominee is Susan Hildreth for State
4 Librarian.

5 Did you plan to have all the librarians in the
6 state appear?

7 [Laughter.]

8 MS. HILDRETH: No, but it worked out that way.

9 SENATOR BATTIN: It sure did.

10 Good afternoon. Thank you for coming.

11 Do you have an opening statement?

12 MS. HILDRETH: Yes, thank you.

13 Good afternoon, Mr. Battin and other Members.
14 I'm very pleased to be with you today.

15 It's a great honor to have been appointed by
16 Governor Schwarzenegger to serve as the State Librarian, and I
17 hope I can follow in the great tradition of our esteemed former
18 State Librarians.

19 As you said, I'm very glad the hearing was
20 scheduled for today because today is our annual California
21 Library Association Legislative Day. So, I hope many you have
22 been visited in your offices by your library supporters, and I
23 know many of them are here today to support me. So, I really do
24 appreciate that.

25 Just to tell you a little bit about my
26 background, I know you've had a long afternoon and we've heard,
27 as Mr. Ashburn said, more about the Fire Service than we might
28 have anticipated.

1 But just briefly, I've worked in the library
2 field, the public library field, for over 30 years, most of them
3 in California. I've worked in a variety of sizes of libraries,
4 from the small city library in Benicia. I worked as the County
5 Librarian at the Auburn Placer County Library, Sacramento Public
6 Library, and also as the City Librarian for the San Francisco
7 Public Library. So, I feel that I have had experience in all
8 the different size institutions that we represent at the
9 California State Library.

10 Let me talk briefly about some of my goals as the
11 State Librarian, and of course, I'd be happy to answer
12 questions.

13 I think, as many of you may know, the California
14 State Library is an institution that's been subject to severe
15 budget reductions, and it certainly is surviving today, but I
16 think we could be providing more services if we had additional
17 funds. But we're doing the best that we can with the funding we
18 have.

19 I would specifically like to restore our
20 materials budget, which in the last several years has been
21 reduced by about 75 percent. It's important to do this to be
22 able to provide a good balance of print and electronic resources
23 to you and all your staff, as well as to maintain and enrich our
24 excellent collection on California history. We have one of the
25 best collections in the state on California history.

26 I also am developing a service plan and a
27 staffing structure so that the State Library can provide
28 effective service with our current, rather diminished, staffing

1 levels. If we do add any positions, strategically add them so
2 they are enhancing direct service to all our users.

3 We would like to deploy a variety of electronic
4 resources seamlessly so that the State Library becomes an icon
5 on every state worker's desk top, and you can click on there
6 everyday and find whatever you want on the Internet or other
7 types of resources.

8 We also certainly hope to continue to meet the
9 needs of the Legislature and the legislative staff as
10 effectively as possible, particularly with the efforts of the
11 California Research Bureau.

12 And I think a very key goal of mine in
13 collaboration with other partners here in the state is to
14 develop a sustainable method for distributing, managing, and
15 preserving electronic government publications. And we could
16 talk more about that, if you'd like to hear what we're trying to
17 do at this time.

18 But I think it's also critical that, as your
19 State Librarian, I focus on the future of all libraries in
20 California, and particularly our public libraries. And I feel
21 it's my responsibility to envision the future of those
22 libraries, and to be able to articulate their value and their
23 future to members of the public, elected officials, and
24 yourselves.

25 Just a couple of my key goals for all libraries,
26 and for the State Library's relationship with libraries, is to
27 continue our successful programs that we already have in place
28 that provide benefit to library users and libraries. Also to

1 try to fund the Public Library Foundation Program, which is
2 direct support to public libraries, at its authorized level.
3 That's another program that has had about a 75 percent reduction
4 in the last several years.

5 I would like to expand resource sharing
6 activities to all types of libraries and also expand the funding
7 for those services, strategically deploy the federal funds that
8 we receive.

9 The State Library receives all the federal funds
10 for libraries in California. It's known as the Library Services
11 and Technology Act Funding. We get about \$16 million a year.
12 And this is really the venture capital for California libraries.
13 We use that to demonstrate a wide variety of new programs and
14 services that we hope can be replicated in libraries throughout
15 the state.

16 We also anticipate continuing to serve as the
17 host agency for the California Cultural and Historical
18 Endowment, and support diverse and significant projects, as well
19 as possibly increase the endowment. Right now, we are deploying
20 approximately \$122 million from Prop. 40 that was allocated for
21 cultural resource projects.

22 And finally, I would like to continue to
23 effectively administer the Library Construction Projects that
24 were funded under Proposition 14, which recently -- we recently
25 completed all our awards, and I hope -- and hopefully we can
26 continue to manage those construction projects upon the approval
27 of the June 2006, \$600 million Library Construction Bond Act
28 that you supported last year. So, we do want to thank you very

1 much for your support on that bill.

2 And I'd be happy to answer any questions. I'm
3 very glad to be here today, and I'm very proud to be your State
4 Librarian.

5 And by the way, I have two children. One is a
6 graduate of UC, one is a graduate of CSU. They're both working,
7 and so they're at their jobs today.

8 SENATOR BATTIN: Is there anybody else you'd like
9 to introduce?

10 MS. HILDRETH: Well, I have all my folks here.
11 This is the California library community.

12 [Applause.]

13 SENATOR BATTIN: Is there anyone who would like
14 to speak in favor of our nominee?

15 MS. KREIMEIER: Good afternoon, Mr. Chairman and
16 Members of the Rules Committee.

17 I'm Danis Kreimeier, the President of the
18 California Library Association and the Director of the Yorba
19 Linda Public Library.

20 The California Library Association is in strong
21 support of the confirmation of Susan Hildreth as State
22 Librarian. Ms. Hildreth is a highly respected nationally known
23 library leader. She has served as President of the California
24 Library Association, and was selected as the California Library
25 Association Member of the Year in 1993.

26 Ms. Hildreth has worked diligently to promote the
27 use of libraries and to improve support for libraries at all
28 levels of government.

1 Ms. Hildreth has already demonstrated during her
2 brief time as the Acting State Librarian that she will be an
3 energetic and creative leader for the State Library and for all
4 of California's libraries.

5 The California Library Association is grateful to
6 Governor Schwarzenegger for his appointment of Susan Hildreth as
7 State Librarian, and we respectfully urge the Senate and this
8 Committee to approve her confirmation.

9 Thank you.

10 SENATOR BATTIN: Thank you.

11 MR. FROST: Mr. Chairman and Members, my name is
12 Jeff Frost. I'm the legislative advocate for the California
13 School Library Association.

14 I just wanted to say that our association
15 strongly supports Ms. Hildreth for the position of State
16 Librarian.

17 Historically, our organization has had a very
18 strong working relationship with the State library and the State
19 Librarian. We've worked very closely with Dr. Starr. We
20 believe that we can have the same type ongoing relationship
21 which will be extremely beneficial for our members, and we have
22 had a similar relationship with her in terms of her working
23 activities over the course of her career.

24 So, we strongly urge you to approve her
25 nomination. Thank you.

26 SENATOR BATTIN: Thank you.

27 MS. MAGHSOUDI: Good afternoon, ladies and
28 gentlemen. My name is Paymaneh Maghsoudi.

1 As the President of the Library of California
2 Board and Whittier Public Library Director, I'm delighted to
3 speak in strong support Of Ms. Hildreth's confirmation as our
4 State Librarian.

5 Susan Hildreth is eminently qualified. She is
6 well respected in the library community, and she's accessible
7 and serves as a mentor to our field.

8 Susan is intelligent and has a wide variety of
9 library experience. She's a good listener and brings hands-on
10 experience to the State Library and to our libraries.

11 Thank you for the opportunity, and we strongly
12 support as President of the Board and Public Library Directors,
13 we strongly support Susan's nomination.

14 SENATOR BATTIN: Thank you.

15 MR. DILLON: Mr. Chairman and Members, Mike
16 Dillon. I'm actually the lobbyist for the California Library
17 Association for 28 years, but I'm here on behalf of myself
18 today.

19 In 28 years representing the Association, this is
20 the first time I've ever testified in support of the State
21 Librarian. And so, that's how much we think of her.

22 SENATOR BATTIN: Did you not like the other ones?

23 [Laughter.]

24 MR. DILLON: I wouldn't go that far, Senator
25 Battin, but we love this one. How about that.

26 [Laughter.]

27 MS. CAIN: Good afternoon, Committee Members.
28 I'm Anne Cain. I'm the Director of the Contra Costa County

1 Library, and also the former Legislative Chair for the
2 California Library Association.

3 I, too, am here to urge you to support
4 Ms. Hildreth as the State Librarian. And I know that I speak
5 for library directors and librarians from throughout the state,
6 from various rural, and suburban, and urban libraries that
7 Ms. Hildreth mentioned that she has experience working in.

8 So, thank you very much.

9 SENATOR BATTIN: Thank you.

10 MS. DYER: Good afternoon. I'm Karen Dyer. I'm
11 speaking on behalf of the California Association of Library
12 Trustees and Commissioners, a statewide organization that serves
13 as a resource to library board members across the State of
14 California.

15 We would like to go on record as wholeheartedly
16 supporting Sue Hildreth as our State Librarian.

17 Thank you.

18 SENATOR BATTIN: Thank you.

19 Anybody in opposition?

20 Questions from the Members? Senator Bowen.

21 SENATOR BOWEN: Thank you, Senator Battin.

22 First I want to note that I saw a couple of
23 librarians out there wearing "Read" pins, and I want you to know
24 that in fact I did. That's why I have questions.

25 [Laughter.]

26 SENATOR BOWEN: I think that's the way it's
27 supposed to work at libraries. You read, you ask questions.
28 And then you ask some more.

1 I'm interested in a subject that I know you spent
2 sometime with my staff on, and I appreciate that time. It's the
3 issue of Radio Frequency Information Devices, or RFID tags on
4 books.

5 I know that the State Library has never had an
6 RFID system. Do you contemplate that that might be something
7 that we ought to be doing at the State Library level?

8 MS. HILDRETH: No, I don't contemplate that for
9 the State Library level. It's not to say -- well, I would say
10 for collection management, it's a very effective kind of a
11 system, but it really is best suited in a collection where you
12 have very high circulation.

13 The State Library collection is really more like
14 a special library than a public library, so I don't anticipate
15 that.

16 But I do think at some point in time in the
17 industry of libraries, the RFID tag may replace the bar code.
18 And it may be at that point in time that the State Library says,
19 "Well, gee, we'd better. This is the only technology being
20 produced. We have to do that."

21 But I don't foresee that in the near future at
22 all.

23 SENATOR BOWEN: As I think you know, my concern
24 with the RFID tag is not about what happens at the library
25 checkout level, because librarians have certainly been among the
26 great defenders of civil liberties and the right of their
27 patrons to read, listen to, or view whatever they want to
28 without governmental interference.

1 But we just had some discussion about RFIDs on
2 passports, and one of the concerns is that people don't just use
3 their passport at the border; they often are required to show it
4 at a hotel in another country, or for various other reasons.

5 And so, the concern about RFIDs and books is not
6 so much in the checkout process. It's what might happen later
7 on with the tag, and where someone might be identified, for
8 example, as carrying a particular book.

9 Obviously, this is not a concern if each library
10 has a proprietary identification system, or it's less of a
11 concern. I mean, you'd have to know which library the book came
12 from, and what that system is.

13 But if, and I think you're correct in this, RFIDs
14 do replace bar codes, there will be a universal system, and the
15 Communist Manifesto will have the same RFID number, regardless
16 of which library it's checked out of.

17 That's how bar code works; right?

18 MS. HILDRETH: No.

19 SENATOR BOWEN: Regardless of where you buy a
20 bottle of Prell, it has the same bar code on it.

21 MS. HILDRETH: That's true, but what happens in
22 libraries today -- and it's interesting. There is a group
23 called the Book Industry Study Group that's working on RFID, and
24 we've been talking with them.

25 But right now, publishers produce books with bar
26 codes. But when a book is at the library, it gets a unique bar
27 code for that library.

28 So, even if we got to the point where publishers

1 embedded RFID chips in books, we still would have to look at the
2 technology to see if we would use that chip which, in fact,
3 could tell what you're saying, or if we would try to do
4 something -- our own type of chip which might give it that
5 unique identifier for the library.

6 But I think, you know, it's certainly a topic
7 that we have to look at very, very carefully. And I think that
8 -- I think one of the key elements that everyone needs to
9 understand, and I guess in a sense why I felt comfortable even
10 suggesting this as a technology that might be used at the San
11 Francisco Public Library, was that the information that we
12 really care about is embedded in the library's online system.
13 That has all the information about who's a borrower, and what
14 book they've checked out, and all the book information.

15 So, I think the real question is, are there
16 individuals or are there devices that could be created that
17 could break that linkage between the tag and the online system,
18 which is protected by just loads and loads of firewalls.

19 Now, you know, there are people at UC Berkeley,
20 Boalt Hall School of Law, who are working on trying to break the
21 system, and they've found some possibilities.

22 So, I think what we have to do is carefully look
23 at the technology and identify parameters that we want to
24 require to make sure libraries feel secure about this.

25 Usually libraries are not on the cutting edge of
26 technology. That is not our role. But in this case, I think
27 because this technology really enhances customer self-service
28 activities, we're looking at it carefully.

1 And I would just add that in terms of the issue
2 of privacy, many libraries are now implementing self-check
3 equipment, where an individual can go. They put their card in a
4 little machine, the book in the machine, and they're done. And
5 that is the most private circulation transaction there can be.
6 You don't have to hand it to a clerk who is trained not to say
7 anything, but they're another person.

8 So, I think to try to support some of the
9 self-service technologies that we're required to implement in
10 public libraries because of reduced funding, we're looking at
11 this technology.

12 SENATOR BOWEN: I do understand that benefit, as
13 well as just the repetitive injury concerns, and the amount of
14 time that it takes to check out books.

15 But again, my concerns go less to the early
16 adopters, because by their very nature, they will have to create
17 a tagging system that is one-of-a-kind or one-off. But it's
18 hard for me to imagine that if this technology really does
19 become used by every library, that someone's not going to say,
20 "Gee, there's already a manufacturer's RFID tag in the book that
21 identifies the title. Why are we going to go to the expense of
22 creating a second proprietary set of tags that is
23 library-specific when it's there?" And particularly if there's
24 another really important library program, which is an
25 inter-library loan program.

26 So, I know we've had a discussion. I just want
27 to make certain that the concern about what happens in the
28 future when we do have an RFID tag instead of a UPC code. Right

1 now, somebody could read the UPC code on the books in my
2 briefcase, but they'd have to take the books out of briefcase to
3 do that. And that's the that primary difference between RFID,
4 where they ought to be able to --

5 MS. HILDRETH: Zap it.

6 SENATOR BOWEN: Yeah, where you actually can just
7 walk by a reader if you're close enough. And I understand you
8 have to be -- you can't be 60 feet away.

9 That's not likely to happen any time soon, but
10 walking through a doorway really does put the reader in close
11 enough proximity to read a tag with current technology because
12 books -- the technology doesn't work with metal or water, but
13 books are neither of the above.

14 MS. HILDRETH: I would just comment that we are
15 looking at encryption for various types of information which
16 could ultimately address a lot of these concerns, but at this
17 point it's not developed enough so that we are concerned that it
18 might slow down the validity and activity of the whole
19 transaction.

20 But just speaking from the State Library point of
21 view, the State Library does not generally fund any kind of
22 technological implementations. That's usually funded locally.
23 So, I would say this is really a local decision. A community
24 must be comfortable with that.

25 And I think that what the State Library could do
26 as this technology is developed, we could make sure that we get
27 the best information we have out to any libraries that are
28 interested in it, so that they can at least find out about how

1 they make their decisions.

2 But I don't see that any point in time the state
3 would ever sponsor an initiative to implement this in libraries.
4 We just really serve as a resource for libraries that want to
5 investigate new technologies.

6 SENATOR BOWEN: All right, fair enough. Thank
7 you.

8 On the archiving issue, as someone who has a
9 collection of five-and-a-quarter inch floppy disks that probably
10 has critical tax information from God only knows what year, I
11 can't even read them enough to know what year they belong to, I
12 think this question of archiving and data format becomes really
13 critical as we deal with how to preserve our state's history.

14 I look forward to working with you and the
15 library community on an issue that's long been of interest to
16 me. Otherwise, we're going to need a Rosetta Stone
17 equivalent.

18 MS. HILDRETH: Yeah, and that's not going to
19 happen.

20 But we're working closely with various partners.
21 In fact, the State Library has taken what I would call a
22 leadership or a facilitative role in bringing together Secretary
23 of State, Archives, also Mr. Kelso and other folks from the IT
24 world of the state to try to address this. It's really a
25 critical issue.

26 And as all of you know, I mean, we can all
27 remember when everybody was using Word Perfect, and we're not
28 using that anymore, and we can't pull our documents off that,

1 and we want state documents to be available to everybody and to
2 be able to be archived and researchable.

3 So, it's a key priority and a project that we're
4 working on. Also the Library of Congress is initiating some
5 funding for prototype projects. We're involved in that, so
6 we'll keep you up to date on that.

7 But hopefully, we can have a solution that brings
8 many partners to the table because it's not -- although the
9 library's happy to facilitate it, we need a much broader
10 discussion.

11 SENATOR BOWEN: Great. You've actually brought
12 to mind some wonderful pieces of software, like Multi-Mate and
13 the Wang, which I think a few people who are here remember.

14 SENATOR BATTIN: I just wish Senator Johnson was
15 here so he could participate in our conversation.

16 [Laughter.]

17 SENATOR BOWEN: You mean so that Mrs. Johnson
18 could participate vicariously?

19 For those of you who don't know, Senator Ross
20 Johnson's wife was a librarian, so libraries were always well
21 represented when Mr. Johnson served on the Rules Committee.

22 SENATOR BATTIN: My comment was referring to Ross
23 Johnson's complete disdain for technology.

24 [Laughter.]

25 SENATOR BOWEN: Which fortunately his wife served
26 to moderate.

27 SENATOR BATTIN: I have to tell a great story
28 about Ross Johnson.

1 So, Ross Johnson was Republican leader in the
2 Assembly, and Tom McClintock comes in. This was when there were
3 computers, there were the monitors, and everything was kind of
4 networked, way back when in the green screen days.

5 And Tom McClintock is mad. He's mad. He comes.
6 He can't believe it. Ross says, "Tom, what's up?"

7 He says, "Ross, I can't believe it. You're the
8 leader of our caucus. I send you five, six, seven e-mails. You
9 don't even respond to me once?"

10 Ross says, "What's an e-mail?"

11 [Laughter.]

12 SENATOR BATTIN: He didn't have the faintest
13 idea. Never turned that thing on behind his desk.

14 Senator Ashburn, any questions, comments?

15 SENATOR ASHBURN: I've reviewed your background,
16 and it's impressive.

17 And I guess coincidental that all the librarians
18 are here, but Diane Duquette instructed me to vote for you
19 today.

20 [Laughter.]

21 MS. HILDRETH: Thank you.

22 SENATOR ASHBURN: And if you know Diane as I
23 do --

24 MS. HILDRETH: You'd better do it.

25 SENATOR ASHBURN: I will make the motion.

26 [Laughter.]

27 SENATOR BATTIN: Senator Cedillo.

28 SENATOR CEDILLO: No questions.

1 SENATOR BATTIN: We have a motion before us.
2 Secretary, please call the roll.

3 SECRETARY WEBB: Senator Ashburn.

4 SENATOR ASHBURN: Aye.

5 SECRETARY WEBB: Ashburn Aye. Senator Bowen.

6 SENATOR BOWEN: Aye.

7 SECRETARY WEBB: Bowen Aye. Senator Cedillo.

8 SENATOR CEDILLO: Cedillo Aye.

9 SECRETARY WEBB: Cedillo Aye. Senator Battin.

10 SENATOR BATTIN: Aye.

11 SECRETARY WEBB: Battin Aye.

12 SENATOR BATTIN: Congratulations.

13 MS. HILDRETH: Thank you.

14 [Thereafter, SENATOR PERATA
15 voted Aye, making the final
16 vote 5-0 for confirmation.]

17 [Thereupon this portion of the
18 Senate Rules Committee hearing
19 was terminated at approximately
20 3:07 P.M.]

21 --ooOoo--
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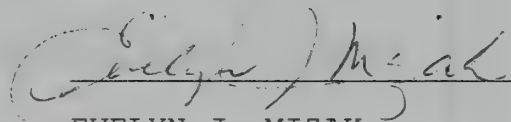
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of April, 2005.


EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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STATEMENT OF GOALS

DALE T. GELDERT
DIRECTOR
DEPT. OF FORESTRY AND FIRE PROTECTION

APRIL 13, 2005

Protect the state's watersheds, habitats and natural resources through sound resource management programs and fire protection systems.

Reduce hazardous fuels in the wildland urban interface through pre-fire engineering, wildland fire codes, and fire protection systems using scientific principles.

Collaborate and coordinate with other fire agencies and related organizations in the implementation of the Blue Ribbon Fire Commission recommendations and actions.

Provide direct leadership and participatory management skills.

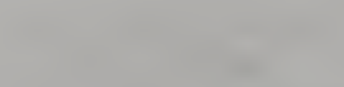
Reorganize the Department to better address current and future challenges.

Prepare and implement a succession plan that addresses the Department's needs for advancement and hiring.

Assist the Board of Forestry and Fire Protection in updating the California Fire Plan and implementing the plan's objectives.

Implement the Department's fire apparatus and aviation replacement plan that addresses current and long-term needs.

THEORY OF THE EARTH



THEORY OF THE EARTH

CHAPTER I

THEORY OF THE EARTH

THEORY OF THE EARTH

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DEPARTMENT OF FORESTRY AND FIRE PROTECTION

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February 15, 2005

Senator Don Perata
c/o Nettie Sabelhaus
Senate Rules Committee Appointments Director
State Capitol, Room 240
Sacramento, California 95814

Dear Senator Perata,

In response to your letter of January 27, 2005, regarding my confirmation hearing before the Senate Rules Committee, I am pleased to submit the following responses to your questions.

Fire Protection

Should your department do more to prevent fires? Are you implementing SB 1369 (Kuehl) enacted last year, which provides a mechanism for CDF to work with private homeowners on increased brush clearance requirements? What resources will you dedicate to fire prevention activities?

Yes, we should do more to prevent fires. As far as I am concerned, any fire that damages life or property is one fire too many. One of my key responsibilities as Director is heading the greatest fire prevention team assembled in California. The goal of the California Department of Forestry and Fire Protection's (CDF) fire prevention program is:

The prevention of ignition and spread of unwanted, human-caused fires with emphasis upon reduction and prevention of large damaging fires.¹

There are many components to a successful fire prevention program: 1) we must be aggressive about removing dangerous fuel loads from the wildlands and implement plans for clearing brush from around homes (SB 1369 and AB 2420), 2) we need to continue existing unit fire prevention programs, and 3) we must maintain an aggressive initial attack strategy to suppress fires quickly.

Remove Dangerous Fuel Loads and Implement SB 1369 (Kuehl) and AB 2420 (La Malfa):

Our Department uses a variety of programs to reduce dangerous fuel loads. The Vegetation Management Program (VMP) uses prescribed (managed) fire and other practices to annually clear thousands of wildland acres with excessive fuel loads. CDF also accomplishes fuel reduction activities in wildland urban interface (WUI) areas through

¹ CDF 9000 Fire Prevention Manual

the use of federal dollars from National Fire Plan efforts. CDF works closely with the Fire Safe Councils throughout the state to encourage fuel reduction activities and property owner education.

I am also very proud of our implementation of a new fuels reduction program funded by Proposition 40, the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002. The goal of the CDF Proposition 40 Fuels Reduction Program is to reduce wildland fuel loadings that pose a threat to watershed resources and water quality. Nonfederal lands in fifteen Sierra Nevada counties are eligible for the Proposition 40 Reduction Program: Butte, Plumas, Sierra, Yuba, Nevada, Placer, El Dorado, Amador, Alpine, Calaveras, Tuolumne, Madera, Mariposa, Fresno, and Tulare.

The passage of SB 1369 represented a significant step forward in increasing fire safety and prevention. CDF field staff has been informed of the new requirement to clear brush out to 100 feet from structures – an increase from the previous 30 feet. I am working with the Board of Forestry and Fire Protection to develop rule language to provide additional guidance to homeowners on what vegetation must be removed and what vegetation may remain. It is likely to be controversial because many homeowners will resist removing enough vegetation to create the needed defensible space. I am committed to this effort because it is critical for reducing conflagration intensity and the number of homes destroyed, and it is critical for firefighter safety in battling the large damaging fires we've seen in recent years.

Likewise, the passage of AB 2420 allows landowners to cost-effectively carry out important forest fire fuels reduction efforts. Approximately 48 percent of the state is classified as having a "high," "very high," or "extreme" fire threat, due in part to the high accumulation of fuels throughout the state. By encouraging landowners to reduce hazardous vegetative fuel loading, AB 2420 will help reduce the threat of fires in many areas and, in some cases, enable CDF firefighters to more effectively respond to the fires that do occur in those areas.

Most CDF Units (21 Units statewide) have one fire prevention specialist, two fire prevention peace officers, one fire planning engineer, and a fire prevention supervisor. Support staff in our Regions (2 statewide) and Sacramento offices assist as necessary. I will continue to dedicate these resources to fire prevention, implementing SB 1369 and educating property owners about AB 2420.

Unit Fire Prevention Program:

Unit Fire Prevention Programs accomplish their goals through four prevention components that balance program efforts and integrate individual activities. The four components used in Unit Fire Prevention Programs are: information/education, engineering, volunteerism, and law enforcement.

Information/education activities include school programs, exhibits, displays, news releases, etc. Fire prevention engineering addresses fire prevention from the standpoint of how machines are designed and how infrastructure can have an effect on the likelihood of a fire starting. Spark arrestors on chain saws are one example. Building materials and construction methods is another. Volunteerism includes our "Volunteers in Prevention"

(VIP) Program. CDF receives thousands of hours of valuable assistance from dedicated volunteers each year to help prevent fires - most notably, "Red Flag" patrols on high fire danger days. As a last resort, in certain circumstances we will take law enforcement action. CDF has a cadre of trained peace officers who write citations and make arrests. An appropriate law enforcement presence is a necessary component of preventing fires.

California Fire Plan:

The California Fire Plan is the state's road map for reducing the costs and losses from wildfires. By placing the emphasis on what needs to be done long before a fire starts, the Fire Plan work is designed to reduce fire fighting costs and property losses, increase firefighter safety, and to contribute to ecosystem health.

The California Fire Plan uses four assessment processes:

- Ignition workload analysis
- Weather analysis
- Fuels analysis
- Assets at risk

A major component of the fire planning process includes extensive community outreach to private and public stakeholders in a collaborative fashion to develop a plan to use valuable resources in the most critical locations. Through the application of GIS technology, prefire projects are strategically located to reduce ignitions and losses.

In terms of suppression success we also have an outstanding record of meeting our goal of 90% of all fires contained at 10 acres or less. This is a measure of our initial attack success in controlling fires before they become large. The Governor's 2005-06 Budget proposes a \$26.5 million increase to CDF's budget to enhance its emergency response efforts, including providing year-round fire protection services in Southern California, replacing fire engines and helicopters, conversion and replacement of radio equipment, and fuels management and biomass utilization in Southern California. These measures are designed to implement key portions of the Governor's Fire Prevention and Suppression Action Plan. I believe that fuel reduction work is valuable and greatly enhances our initial attack success.

All of the measures we take in the department reduce the threat of fires and enable CDF firefighters to more effectively respond to the fires that do occur.

Last year, the Governor vetoed legislation (SB 1346, Ducheny) which, among other things, sought to obtain more information on fire prevention as a cost-effective use of resources. Would you provide detailed information to us on fuel reduction activities and prescribed burns including how much acreage was treated?

CDF has a Vegetation Management Program (VMP) with a major focus on fuel reduction through the application of prescribed (managed) fire and other projects. Table 1 attached shows VMP activity and status of the last completed fiscal year (July 1, 2003 to June 30, 2004). In summary, this table reports 12,705 acres burned on 34 projects, and 6,032 acres treated on 85 non-VMP projects.

CDF also accomplishes fuel reduction activities in wildland urban interface (WUI) areas through the use of federal dollars from National Fire Plan funding. Table 2 attached shows actual awards, and acres treated.

CDF has begun implementation of a new fuels reduction program funded by Proposition 40, the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002. The goal of the CDF Proposition 40 Fuels Reduction Program is to reduce wildland fuel loadings that pose a threat to watershed resources and water quality. Nonfederal lands in fifteen Sierra Nevada counties are eligible for the Proposition 40 Reduction Program: Butte, Plumas, Sierra, Yuba, Nevada, Placer, El Dorado, Amador, Alpine, Calaveras, Tuolumne, Madera, Mariposa, Fresno, and Tulare.

Approximately \$1,890,000 in Proposition 40 funding will be awarded through July 1, 2005, for qualifying fuel treatment projects. In addition, approximately \$350,000 is available to assist project proponents with preparation of Community Wildfire Protection Plans and/or analysis of environmental impacts as necessary to comply with the California Environmental Quality Act (CEQA). Project proposals of any dollar amount will be considered. However, project proposals should be designed to be completed in a 12-month period and are encouraged to limit the State's Proposition 40 contribution in any project to less than \$50,000. The area for which funding is available generally applies to State Responsibility Areas in or adjacent to communities located within identified key areas with high or moderate levels of watersheds assets at risk.

VEGETATION MANAGEMENT PROGRAM

Activity from July 1, 2003 to June 30, 2004

Note: Southern Region; Unburned Approved Projects and Non VMP Project data is based on best available information as of April 30, 2004. Data for Progress to Date is based on July 1, 2003 to June 30, 2004.

2003 to June 30, 2004.

NORTHERN REGION						SOUTHERN REGION						NORTH		
Unit	Prescribed Burn 2003-2004		Non-Prescribed		Unit	Prescribed Burn 2003-2004		Non-Prescribed		Unit	Prescribed Burn 2003-2004		Non-Prescribed	
	Number	Acres	Number	Acres		Number	Acres	Number	Acres		Number	Acres		
BTU	1	920	5	300	AEU	4	700	3	500	BTU- Butte RU				
CZU	2	307	0	0	BDU	0	0	1	21	CZU- San Mateo/Santa Cruz RU				
HUU	1	20	1	1	BEU	2	916	0	0	HUU- Humboldt/Del Norte RU				
LMU	1	91	1	100	FKU	1	778	0	0	LMU- Lassen/Modoc RU				
LNU	1	450	5	220	KRN	0	0	1	22	LNU- Sonoma/Lake/Napa RU				
MEU	0	0	2	74	LAC	1	76	5	47	MEU- Mendocino RU				
MRN	0	0	0	0	MMU	2	45	1	150	MRN- Marin County Fire				
NEU	1	130	7	2,261	MVU	1	506	0	0	NEU- Nevada/Yuba/Placer				
SCU	2	500	3	670	ORC	0	0	0	0	SCU- Santa Clara RU				
SHU	0	0	14	215	RRU	2	1,034	1	145	SHU- Shasta/Trinity RU				
SKU	0	0	1	30	SBC	0	0	0	0	SKU- Siskiyou				
TGU	3	3,675	3	620	SLU	1	250	12	65	TGU- Tehama/Glenn RU				
					TCU	2	60	6	237	SOUTH				
					TUU	0	0	1	9	AEU- Amador/EI Dorado RU				
					VNC	6	2,247	4	45	BDU- San Bernardino RU				
TOTALS	12	6,093	42	4,491	TOTALS	22	6,612	43	1,541	BEU- San Benito/Monterey				
SUMMARY				34 Projects worked on this year					85 Non VMP Projects					VNC- Venture County Fire
				12,705 Acres burned this year					6,032 Non VMP Acres					

CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION
WILDLAND URBAN INTERFACE (2/3/2005)

Fiscal Year	Federal Agency	Grant Applications Funded	Grant Funds Received	Federal Required In-Kind Match (50/50)	Approx. Acres Treated
2000	US Forest Service	2	\$54,000	\$54,000	
	TOTAL	2	\$54,000	\$54,000	
2001	US Forest Service	29	\$1,390,000	\$1,390,000	6694
	Bureau of Land Management (Original)	12	\$716,000		
	Bureau of Land Management (Rev. 6/30/03)	9	\$439,000	\$439,000	3342
	Fish and Wildlife Service	2	\$126,000		
	TOTAL	40	\$1,955,000	\$1,829,000	
2002	US Forest Service	16	\$938,000	\$938,000	125
	Bureau of Land Management	27	\$1,460,000	\$1,460,000	1639
	Fish and Wildlife Service	8	\$752,000		
	TOTAL	51	\$3,150,000	\$2,398,000	
2003	US Forest Service (Original)	25	\$1,170,000		
	US Forest Service (Rev. 3/31/03)*	2	\$71,000	\$71,000	6
	Bureau of Land Management	21	\$1,500,000	\$1,500,000	2480
	TOTAL	23	\$1,571,000	\$1,571,000	
2004	US Forest Service	6	\$1,005,364	\$1,005,364	2272
	Bureau of Land Management	7	\$680,550	\$691,050	1587
	TOTAL	13	\$1,685,914	\$1,696,414	
2005	US Forest Service	5	\$991,624	\$991,624	4311
	Bureau of Land Management	8	\$380,438	\$380,438	1849
	TOTAL	13	\$1,372,062	\$1,372,062	
* US Forest Service reduced the original 25 projects for \$1.71 million due to the reduction of the WUI FY 2003 federal funding					

3. **Is your department trained and adequately equipped to fight structural fires, in addition to traditional forest and wildland fires? If not, what can the state do better?**

I believe CDF firefighters are trained to the highest standard in all disciplines of everyday fire services. Our mission is not exclusive to traditional wildland firefighting, but states that we "protect the people of California from fires, respond to emergencies, and protect and enhance forest, range, and watershed values provide social, economic, and environmental benefits to rural and urban citizens." CDF's responsibilities and authorities are outlined in the California Public Resources Code (PRC). Specifically, as stated in PRC Section 713, "The department is responsible for the fire protection, fire prevention, maintenance, and enhancement of the state's forest, range, and brushland resources, contract fire protection, associated emergency services, and assistance in civil disasters and other non-fire emergencies." Further, PRC Section 4414 states, "The department, in accordance with a plan approved by the board [of Forestry and Fire Protection] shall do all of the following.....may provide, when available and to the extent that it does not require additional funds, rescue, first aid, and other emergency services to the public in state responsibility areas. Any emergency medical services shall be in accordance with Division 2.5 (commencing with Section 1797) of the Health and Safety Code and any rules and regulations adopted pursuant to that division."

CDF trains and equips its work force to meet these responsibilities, including the abatement of structural fires, hazardous materials incidents, vehicle fires and vehicle accidents, and responses to other medical and natural disaster situations. The depth of personnel resources to accomplish CDF's mission is comprised of both "state general funded employees," and, under local cooperative agreements, "local government funded employees." The basic training provided to prepare our firefighters to engage in local government firefighting tactics and strategies, as required by our local contractual obligations, enhances the foundation of our wildland fire training. This results in an increased level of proficiency in all firefighting disciplines and, upon the completion of the CDF Basic Firefighting Academy, enables our firefighting personnel to handle all emergency situations that may arise during complex wildland fire incidents.

Paying the Costs

In the rapidly expanding 'wildland urban interface' of California, what are your views on whether fire suppression in those areas should be primarily a state or local responsibility? If, through local land use decisions, wildlands are transformed into urban areas, should these areas then become a local responsibility?

I believe fire suppression responsibilities in the Wildland Urban Interface (WUI) are shared between state and local organizations. We must maintain an equitable way to utilize state and local firefighting forces to rapidly respond to a variety of fires both large and small.

The wildland urban interface (WUI) is essentially where homes and wildland fuels are mixed together and often involves a number of overlapping jurisdictions and responsibilities. Californians' love of open space and wildlands has been attracting residential development into areas with wildland fuels for decades. The widely used term, WUI, can refer to incorporated cities, dense urban enclaves with the State Responsibility

Area (SRA) or other areas of the SRA where there are both houses and wildland fuels. Across the state, the vast majority of houses in the WUI are within incorporated cities where CDF does not have jurisdiction. Outside of incorporated cities and dense urban enclaves in the State Responsibility Area (SRA), CDF is responsible for wildland fire and local fire districts are responsible for structure fire protection and other fire services directly related to structures and their inhabitants. Across the state, 95% of the homes in SRA also have a local fire district responsible for structure protection. Inside of incorporated cities, local fire departments are responsible for both wildland and structural fire protection. Inside of dense urban enclaves in SRA, as well as within much of the area within incorporated cities, there little if any wildland fuels that necessitate a continuous wildland fire presence.

Even with the increased emphasis on infill development in urban areas, most new development in California is on the edges of existing development and often within 'flying ember' distance of wildland fires. The vast majority of these new homes are in suburban subdivisions within incorporated cities where CDF does not provide wildland fire protection and where CDF does not have any commenting responsibility. For new residential construction outside of incorporated cities, CDF does have a commenting responsibility on major new developments to ensure that the adequate fire safety provisions are included. In many cases, this requires expenditures on improved road access, new local fire district stations, and wildland fuels clearance. Under PRC 4290, the State Fire Marshal has the ability to adopt regulations relating to the fire safety of new buildings. Under PRC 4291, the local building official has the responsibility to ensure that any new structure conforms to all applicable state and local standards. Within incorporated cities, the transformation of wildlands into urban areas is already a local government responsibility. Outside of incorporated cities, CDF, the State Fire Marshal, local building officials, and local fire departments all have specified and complementary responsibilities. In all cases, CDF is extremely interested in improving the state's overall ability to improve the efficiency and cost-effectiveness of the Fire Protection system.

Significant areas do come out of SRA when they are incorporated into growing cities or achieve an urban density threshold of more than 3 houses per acre over a significant area. CDF conducts an evaluation of SRA lands every 5 years and the Director provides the plan to the Board of Forestry and Fire Protection for their process of public review and approval. In the 2000 SRA review, over 185,000 acres of land were taken out of SRA due to incorporation or urbanization. We have just begun the field evaluation for the 2005 SRA review and once again expect that considerable area will be classified out of SRA due to incorporation or urbanization.

2. **In "contract counties," where the state pays locals to assume the state's role in fire suppression efforts, how does the department hold the counties accountable for their expenditures? How do we ensure that the state funds provide more than merely a localized benefit?**

I maintain a strict accounting in the use of funds for fire suppression. The best way of ensuring accountability is through a well developed and communicated annual operating plan which specifically details operational and administrative guidelines for how a Contract County provides SRA fire protection and what costs incurred are billable to the State's E-Fund. Only those resources used in support of the State mission (protecting SRA interest which can vary from incident to incident) are eligible for reimbursement consideration with

the Department's E-Fund policy stipulating that only a CDF official can authorize E-fund expenditures.

For example, for an incident which is in the initial attack mode as defined in the operating plan, CDF and each contract county have agreed to a pre-approved listing of resources (1st and 2nd alarm) which are considered as a reasonable response level that can be billed to the State. This is discussed and updated annually at each contract county operating plan meeting. If a contract county exceeds the pre-approved response, they must ask for CDF authorization of those resources to be State billable. In the early stages of a contract county incident, this authorization lies with the Region Duty Officer.

If a contract county SRA incident exceeds initial attack, again defined in the operating plan, the Duty Officer remains as the point of contact to approved resource orders for State reimbursement until a CDF Agency Representative (AREP) arrives on-scene. Once on-scene, the Duty Officer will hand off the authorization responsibilities for E-Fund expenditures to the AREP. One of the main responsibilities of the AREP is to ensure that the State's interests are well represented and to approve/disapprove incident expenditures for State reimbursement consideration. A major point of discussion on most wildland fires which have both SRA and local interest is the protection of structures. The AREP has the responsibilities for determining when structure protection falls under the State mission and which resources used to protect structures can be billed to the E-fund.

CDF staff thoroughly reviews all incident invoices for all of the contract counties before approving the invoices. If questions surface on a billing item, the CDF official with E-Fund authorization authority at the time the expense was incurred (Duty Officer, Duty Chief, AREP) is contacted for verification. If the CDF official did not approve the item, reimbursement is denied. The Department created the position of Deputy Chief, Contract Counties with one of the primary duties being to ensure that Operating Plans and E-fund expenditure expectations are clearly understood by the contract counties and that invoice review and associated payment approval or denial is fairly administered.

ate of Harvest

Does Pacific Lumber's rate of harvest represent sustained yield—and not just in the Hely Creek area?

Pacific Lumber's rate of harvesting on their ownership over the past five years does represent sustained yield (i.e. where harvesting does not exceed growth within a defined harvest area) over the long term in accordance with the Forest Practice Rules (FPR).

Under the FPR, the volume harvested averaged over any 10 year rolling period cannot exceed the projected volume of timber growth on the timber inventory projected to be present at the end of the 100 year planning period. The rules do allow for different levels of harvesting from decade-to-decade as long as the total volume harvested averaged over a rolling 10-year period does not exceed the projected growth. Pacific Lumber has harvested at a rate that meets FPR requirements during the first five years of the 100 year planning period. Pacific Lumber's Sustained Yield Plan projects that it will achieve sustained yield over the 100 year period by reducing its rate of harvest in the later decades.

Pacific Lumber has submitted a new Long Term Sustained Yield projection to CDF for review. CDF will not approve the projection if it does not meet the requirements of the FPR and demonstrate that the harvest, inventory and growth projections are sustainable over the 100 year planning period.

2. Should planning be improved at the watershed level to minimize water runoff, downstream flooding and sedimentation build-up and, if so, do you have any specific recommendations?

I believe that expanding the planning area to the watershed level, along with increasing the duration of the planning period, would be very beneficial. Planning should accurately account for the whole range of sediment sources and land uses. For example, in the lower Van Duzen River basin containing the previously mentioned Hely Creek, the US EPA TMDL report noted that less 8% of the total sediment delivery is associated with post-1980 timber management and that rural residential acreage is now equal to industrial timberland acreage. For timberlands where we have responsibilities, we believe that by expanding the geographic area covered by a timber harvest plan and increasing the time period covered under the plan, CDF and the other review team members would be better able to assess the cumulative impacts of timber harvest operations on runoff, flooding, sediment inputs, water quality, wildlife habitat, etc. and better craft mitigation requirements for planned timber operations.

During 2004, CDF sponsored AB 2762 (Keene) which, among other things, would have provided for a ten year Timber Harvest Plan for landowners or groups of landowners who control a substantial portion of the acreage in a planning watershed and who adopt a long range view of managing timber on their lands. This legislation would have promoted long term watershed planning. Regrettably, this bill died in the Assembly Natural Resources Committee.

In addition, CDF has been pursuing other means of encouraging watershed based planning and improving planning overall, including:

- encouraging landowners to participate with agencies to develop planning documents such as Habitat Conservation Plans and Natural Community Conservation Plans, and working to facilitate the implementation of those plans consistent with the THP process, and
- working with staff from the regional water quality control boards to develop and support planning watershed or ownership approaches to the issuance of Waste Discharge Requirements with Timber Harvest Plans tiered to the process and approach developed by the landowner and the regional board staff.

Maintaining Structure Across the Landscape

Most of the large industrial landowners have moved toward an increase in clear cutting. Many of these areas are replanted with the same species of trees, known as even-age plantations rather than a variety of species.

1. **Do you believe this practice results in wildlife habitat that is less diverse? Would you please describe what approaches your department is taking to maintain wildlife habitat in timber harvest areas.**

Of the approximately thirty industrial timberland owners with holdings larger than 10,000 acres, most are not moving towards an increase in clear cutting and still use a broad range of silvicultural practices appropriate for different sites. Although the impacts of clear cutting on wildlife habitat diversity will naturally vary from region to region and from wildlife species to wildlife species, clear cutting conducted in accordance with the Forest Practice Rules (FPR) generally will result in *increased* wildlife habitat diversity as compared to selection harvesting.

The FPR limits the size of clearcuts to 20 to 40 acres in size. In addition, Registered Professional Foresters (RPFs) are expected to layout of the harvest boundaries to maintain unique habitat elements and ecological niches and disclose this information in harvesting plans submitted to CDF for review. With appropriate care and planning, creating well designed, small clear cut patches which retain key habitat elements within a larger timbered area will, over time, result in a greater complexity or richness of wildlife habitats – ranging from open areas where clear cutting has recently been conducted to areas of early forest development from prior clear cuts to mature forest development in areas where harvesting is limited under the FPR to protect riparian zones and retain wildlife habitat. In particular, for the Sierras, where timber owners have largely used selection harvesting for the past 100 years, creating small clear cut patches will result in a broader range of wildlife habitat than currently exists.

CDF uses the Timber Harvest Plan (THP) review process to help ensure that a broad range of wildlife habitats are maintained in timber harvest areas. Under this process, landowners are required to evaluate and disclose the different types wildlife habitat in the areas designated for harvesting as well as in area surrounding the harvest area, including snags/den trees, downed, large woody debris, etc., and habitat areas for threatened or endangered species. The THP review team—which consists of representatives from CDF, the Department of Fish and Game, a regional water quality control board, and the Department of Conservation — conduct a field review of the areas identified by the landowner, and make recommendations for changes to the THP, when necessary, to protect critical habitat areas.

In addition, most of the large landowners in coastal areas either have or are preparing Habitat Conservation Plans. Habitat diversity and distribution is a key consideration in the development of those plans and is assessed by the responsible wildlife agencies during the review of those plans.

What is the policy of the department in retaining hardwoods, as well as old large trees within areas harvested?

Hardwoods. In general, the department's policy on hardwoods within timberlands is that timber harvest operations should maintain the volume of hardwoods at levels consistent with the levels that hardwoods occurred naturally prior to the introduction of European forest management on those lands.

In some areas, the volume and extent of hardwoods is much higher than the pre-European levels and is interfering with the development of conifers. Most commonly, these situations arise in coastal areas where there is a significant amount of tanoak that prevents the development of redwoods and other conifer forests. In those areas, the Department is encouraging removal of some tanoak and other hardwoods, while retaining larger older tanoak trees and less common hardwood species such as chinquapin or madrone within these areas.

In other areas where some hardwood species may be in decline, CDF is encouraging the retention of the hardwood species in those areas and is encouraging the creation of growing conditions that will facilitate the regeneration of hardwoods through its timber harvest plan (THP) review process. In the Sierras, for example, there is concern over the decline of black oaks in some parts of the Sierra. Black oaks grow well in areas that receive a fair amount of sunlight. Generally, plans using uneven-aged systems also retain older black oak trees. However the absence of fire in these areas has resulted in poor conditions for the black oaks to regenerate in their preferred conditions of open sunlight. For areas which are managed using clearcuts or other even-aged species, younger black oaks will regenerate from stump sprouts and acorns and grow to ensure a continual age range of black oaks within the mixed conifer forests. Through the THP review process, CDF is encouraging retention of black oaks and providing the growing conditions for black oaks to regenerate.

Old Large Trees. The Forest Practice Act (FPA), Forest Practice Rules (FPR), and along with other laws and regulations provide protection for old-growth forest and old-growth trees. Some of these are:

- The FPR late seral rules require landowners to assess how their harvesting of late seral stands of 20 acres or greater, will maintain "functional wildlife habitat" within the landowner's area of influence.
- FPR stream protection rules which require very high canopy retention levels. This, in effect, leads to the retention of bigger, older trees along stream corridors, plus retention of the 10 largest trees per 330 feet of stream for future recruitment of large woody debris in stream channels. This is critical for fish habitat.
- Public Resource Code (PRC) Section 4721-4727 which expressly prohibits the cutting of any Sequoia with a diameter exceeding 16 feet in Fresno, Tulare, or Kern County.
- Federal rules for the protection of the spotted owl require landowners to show how the retained habitat configuration and proposed mitigation measures in the timber harvesting plan will prevent a "taking" of the owl, as prohibited by the federal Endangered Species Act. Harvesting of the trees is allowed only if the U.S. Fish and Wildlife Service makes a "no-take" determination.

In addition, under the Timber Harvest Review Process, landowners are required to evaluate and disclose the different types wildlife habitat in the areas designated for harvesting as well as in area surrounding the harvest area, including large older forests and habitat including habitat areas for threatened or endangered species. The THP review team—which can consist of representatives from CDF, the Department of Fish and

Game, a regional water quality control board, and the Department of Conservation — conduct a field review of the areas identified by the landowner and make recommendations for changes to the THP, when necessary, to protect critical habitat areas.

Finally, the long term retention of land under timber management allows for the long term growth of medium sized trees into larger trees with the associated structural complexity and wildlife habitats.

What improvements to Non-Industrial Timber Management Plans could be used to maintain better wildlife habitat? How could these improvements be encouraged?

First of all it is important to point out the fact that forests land always provide more and richer wildlife habitats than the subdivisions that are increasingly expanding out in the wildlands of California. Non-Industrial timberland owners will continue to provide those complementary wildlife habitat benefits if continued ownership remains viable in the eyes of the landowners. Management of forests under Non Industrial Timber Management Plans (NTMPs) can help create conditions that provide good wildlife habitat and can result in conditions that actually help attract threatened and endangered species. This can be a problem for landowners, however, to the extent that the presence of threatened and endangered species triggers additional restrictions on how they can manage their lands.

CDF has been working with other state and federal agencies, as well as other interested parties, to identify ways to provide incentives to NTMP landowners to develop and maintain important wildlife habitats. This has led to the creation of a Stewardship Non-Industrial Management Plan process wherein a landowner would agree to a set of best management practices that the federal and state agencies concur would provide for species and water quality protection. Under the Stewardship NTMP, management practices would exceed the current standards in the Forest Practice Rules. In exchange for this enhanced stewardship commitment on the part of the landowner, the federal and state agencies reduce the cost of documenting their land use practices and would provide specific assurances to the landowner that if the habitat improves to the point that it becomes suitable for a listed species and a listed species does move on to the property, the landowner would continue to be able to manage the property with few or no further restrictions. This would help provide an incentive for landowners to manage their lands for retention or recruitment for wildlife habitat improvement under an NTMP.

During the 2004 Session, CDF also sponsored AB 2762 (Keene) which, among other things, would have created a new NTMP—a Conservation NTMP (CNTMP)—for midrange landowners (2,500 to 10,000 acres in size). The CNTMP would have been similar to the NTMP; however, in exchange for a CNTMP permit, a midrange landowner would have been required to agree to adopt a conservation strategy in which they would maintain their lands as working forests, rather than converting the lands to another use such as a commercial development or residential subdivision, for a minimum of 30 years. The conservation strategy would have been documented as a conservation easement. This bill died in the Assembly Natural Resources Committee.

Budget and Administrative Issues

1. **Will the department again propose legislation to increase timber harvest fees? Should the regulated community and not the general taxpayer pay for the costs of the review of timber harvest plans?**

The 2005-06 Governor's Budget does not propose the institution of timber harvest fees.

Under the current funding structure, both the regulated community and the general taxpayer pay for the regulation of timber harvesting. Timber operators are responsible for paying the costs of preparing the timber harvest plan (THP) and for the increased operational costs to comply with the prescriptive rules. In doing so, the timber operator must hire a Registered Professional Forester to prepare the THP which provides extensive descriptions and analyses of the planned timber harvest operations. On average, timber landowners spend \$20,000 to develop a single THP.

The general tax payer pays for CDF's review of these plans to help minimize the impact to the environment of the timber operations. The review of THPs by CDF serves the public interests, and is appropriately paid from the General Fund. Imposing timber harvest plan fees on the regulated community would make it even more difficult for California's timber industry to compete in the global market place and would adversely affect the industry and the communities in California that depend on timber operations as part of their local economy.

2. **When will the department develop a management plan for the Jackson Demonstration State Forest that will address the requirements of the court? Why did the department close the state's only seed bank at Davis recently?**

Jackson Demonstration State Forest. The Superior Court ruled on July 30, 2003, that there were procedural and technical problems with the Environmental Impact Report (EIR) for the Jackson Demonstration State Forest (JDSF) Management Plan prepared by CDF. One of the key issues that the judge ruled on was that the Board of Forestry and Fire Protection (the Board), rather than CDF, should have been the agency to certify the EIR. It is important to note that the court's concerns were with the EIR, not the Management Plan itself.

The Board has contracted with the department to prepare a new EIR for the JDSF Management Plan. Included in the EIR are a range of alternatives for the Board to consider relative to the future management direction for JDSF. The EIR will also address the specific issues concerning regional setting and cumulative impacts as required by the court. The EIR will be made available for public comment, and will likely be revised by the Board in response to public comment. The Board anticipates completing the process and certifying the EIR and the management plan in June 2005.

Seed Bank. CDF has not closed the seed bank at Davis and it is still operating. However, in light of the funding reductions due to the shortfall in the Forest Resources Improvement Fund (FRIF), the Department has been seeking to identify ways that it can increase the efficiency of its operations. As part of this effort, CDF has determined that it can reduce the costs of processing and storing seeds by co-locating its operations with the U.S. Forest Service's seed processing and storage operations in Placerville. The department

anticipates co-locating its seed collection and storage operations with the U.S. Forest Service by June of 2006.

Under what circumstances will the department's newly appointed chief counsel have to recuse herself from matters involving Pacific Lumber Company?

I am pleased that the Governor appointed Ginevra Chandler as CDF's Chief Counsel. Ms. Chandler brings a wealth of experience and expertise in natural resources law, and will be a tremendous asset to the department.

Let me first clarify that Ms. Chandler was not a law partner of Jared Carter as stated in your letter. Ms. Chandler served as Deputy County Counsel for Humboldt County until June 2000 when she accepted a position with the law firm of Carter, Behnke, Oglesby & Bacik. Mr. Carter had resigned his partnership with that firm in August 1999 – nine months before Ms. Chandler joined the firm. The Headwaters Agreement was executed in February 1999.

Ms. Chandler will recuse herself from matters involving Pacific Lumber if her involvement would create a conflict of interest. I do not anticipate that this will occur very often. As an attorney, Ms. Chandler is bound by the Rules of Professional Conduct for Attorneys. Rule 3-310 specifically address situations where there may be a potential conflict of interest.

1. *Rule 3-310 states that an attorney must not accept representation of a client without providing written disclosure to a client that the attorney has had a relationship with a previous client and that relationship would substantially affect the representation of the current client.*

In this case, Ms. Chandler has provided written disclosure of her firm's representation of the Pacific Lumber Company in her application to the Governor's Office. In addition, Ms. Chandler has provided CDF with a list of all matters in which Ms. Chandler has participated in the legal representation of any private client.

2. *Rule 3-310 also prohibits an attorney from disclosing confidential information to the detriment of a former client.*

This rule is specifically intended to protect the interests of the former client. Ms. Chandler will not participate on CDF's behalf in any matter in which she has obtained confidential knowledge from a former client.

As CDF's chief counsel, Ms. Chandler will vigorously represent the interests of the State Department of Forestry and Fire Protection only.

Improving Relations with Regional Water Quality Control Boards

How is your department assisting in implementing the provisions of SB 810?

CDF has worked closely with the regional water quality control boards, as well as the Department of Fish and Game, to address any issues that are raised by these agencies

during the Timber Harvest Plan (THP) review process. As a result, none of the regional boards have felt the need to exercise their authority under SB 810.

If, however, a regional board (or Executive Officer) exercises its authority under SB 810, I have provided CDF's THP review staff with written policy direction to implement the provisions of SB 810. This policy was developed in consultation with the North Coast Regional Board and State Water Resources Control Board staff.

2. The North Coast Regional Water Board non-concurred in a significant number of timber harvest plans in the Van Duzen watershed where CDF approved 25 plans covering 24,500 acres. How did the department assess the comments and concerns of the regional water board and what was the outcome?

First, let me begin by clarifying that since March 1, 1999, CDF has approved 187 THPs encompassing 29,019 acres for the Van Duzen Hydrologic Area, rather than 25 plans covering 24,500 acres as stated in your letter.

The department has carefully considered and assessed the comments and concerns raised by the North Coast Regional Board staff with regard to the timber harvest plans submitted for the Van Duzen Hydrologic Area. Specifically, in considering the proposed harvest plans and the issues raised by the board's staff, CDF reviewed the U.S. Environmental Protection Agency's (EPA) scientific data (prepared for it by Tetra Tech Associates) for calculating Total Maximum Daily Loads (TMDLs) for the Van Duzen Hydrologic Area. This data showed that less than 1 percent of the sediment loading in the Van Duzen Hydrologic Area is due to timber harvest operations. CDF also reviewed site specific scientific data prepared by Pacific Watershed Associates for Pacific Lumber. The data from this study was consistent with the U.S. EPA's TMDL findings for the Van Duzen. Both studies were consistent with the assessments and biological opinions developed as part of Pacific Lumber's Habitat Conservation Plan (HCP). Based on all of this information, the Department concluded that the THPs would not violate the watershed disturbance thresholds identified in the HCP. CDF has requested the regional board staff to provide additional scientific data that would contradict the data in the scientific studies and that would support the board's staff's concerns. To date, the regional board staff has not provided this data.

3. How do you propose to work with the Department of Fish and Game on species protection issues, and please comment particularly on the likely effect on timber harvesting of the recent proposed listing of coho that is now being finalized?

CDF currently works extensively with the Department of Fish and Game (DFG) at all levels on species protection issues. CDF and DFG field staff meet quarterly to address issues and concerns related to the timber harvest plan (THP) review process. In addition, CDF and DFG program managers also meet regularly. The purpose of these meetings is to discuss THP review issues and work toward resolution and understanding of issues that have arisen during the course of THP review. CDF has also developed a mediation process to help resolve disputes between landowners and DFG in the THP review process.

At the policy level, CDF has participated in the Coho Recovery team and associated subcommittees. The Department has met and will continue to meet with representatives of DFG to discuss implementation of the coho recovery plan.

With regard to the proposed listing of coho, CDF intends to consult with DFG on a THP basis (as it does with other listed species) to ensure that unauthorized take of coho does not occur.

What are your thoughts on the proposed elimination of the Board of Forestry and Fire Protection? How would this impact public input into the development of regulations and on timber harvest operations, water quality and wildlife questions?

I believe that, while the Board of Forestry and Fire Protection (the Board) serves an important role in providing the public with opportunities for input into policy and regulation development, the Department will be able to effectively and efficiently develop forest management and fire protection policy while continuing to provide the public with equal levels of opportunity for participation.

I have directed CDF staff to work with the Board staff to review the various functions of the Board and to develop a strategy for transition of the Board's functions to CDF. I recognize that public input is essential for the development of good public policy and regulations. As a result, I have directed staff, during the course of the review, to explore options for regulation development that maximize the transparency of the process and provide for meaningful public input.

Headwaters Forest

What is the status of the states negotiations with Pacific Lumber Company regarding the amendments to the habitat conservation plan for the Headwaters Forest? What types of amendments are anticipated and how will they differ from the requirements of AB 1986?

CDF has not been significantly involved with the proposed amendments to the habitat conservation plan. The habitat conservation plan was approved by and has been implemented by the Department of Fish and Game (DFG), the U.S. Fish and Wildlife Service and NOAA Fisheries.

As CDF understands it, the requested modifications were made by the company pursuant to an adaptive management process under the terms of the habitat conservation plan, which cover the following areas:

- Changes to the timing of certain wildlife and wet weather restrictions.
- Modification of storm proofing and other road improvement requirements.
- Capping of HCP costs associated with mitigation, monitoring and science.
- Banking of sediment mitigation credits.
- Modifications to interim streamside buffers.
- Modifications to the hill slope stability protection measures.

Both CDF and DFG have advised Pacific Lumber that the requirements of AB 1986 and the Agreement Relating to Enforcement of AB 1986 must be complied with and no modifications can be made which would conflict with those requirements.

2. **The company recently threatened bankruptcy if it is not allowed to harvest more volume. Do you think greater harvest is advisable from an environmental perspective? Do you think greater harvest would violate the department's understanding of an appropriate rate of harvest in the affected watersheds?**

The Pacific Lumber Company has indicated that it may have to declare bankruptcy if the North Coast Regional Water Quality Control Board does not approve Waste Discharge Requirements for the timber harvest plans (THP) that have already been approved by CDF. CDF determined that these THPs were consistent with Board of Forestry and Fire Protection rules related to demonstration of sustained productivity and did not represent a deviation from an appropriate rate of harvest or an acceleration in levels of proposed harvest. Pacific Lumber is not proposing to increase the volume harvested.

I hope you find this information useful and responsive to the Committee's inquiry. Please feel free to contact me at (916) 653-7772 if you have any questions or would like additional information.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Dale T. Geldert", with a large, stylized initial "D" and a long horizontal flourish extending to the right.

Dale T. Geldert
Director

STATE OF CALIFORNIA—THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF FORESTRY AND FIRE PROTECTION**OFFICE OF THE STATE FIRE MARSHAL****RUBEN GRIJALVA, STATE FIRE MARSHAL**

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April 15, 2005

Senator Don Perata, Chair
Senate Rules Committee
State Capitol, Room 40
Sacramento, CA 95814

Re: Statement of Goals

Dear Senator Perata,

As requested, the following are some of the goals that I hope to accomplish as California State Fire Marshal:

1. Provide leadership within California on matters relating to fire and life safety.
2. Improve communications with stakeholders who are affected by the actions of the Office of the State Fire Marshal (OSFM). To develop processes designed at building consensus.
3. Coordinate activities with other state agencies, local government, private industry, and the public to assure the effectiveness and efficiency of the OSFM.
4. Provide a high level of customer satisfaction in carrying out the legislative mandates of the OSFM.
5. Operate in a manner that maintains the high level of professionalism and integrity of the OSFM.

The following are a few of the specific objectives that I hope to accomplish:

1. Support and improve the state fire training system.
2. Find solutions for the problem of illegal dangerous fireworks in California.
3. Develop and propose for adoption effective wildland urban interface building standards.
4. Recommend for adoption modern building and fire codes.
5. Improve fire prevention capabilities in the wildland urban interface
6. Support the fire prevention activities of local government.
7. Improve management/labor relations within the OSFM and within the California Fire Service.
8. Develop and implement a succession plan for the OSFM.
9. Develop a 5-year strategic plan for the OSFM.
10. Support the California Film Commission's efforts to prevent "Runaway Productions."

If I can be of further assistance, please don't hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. Grijalva".

State Fire Marshal

**CDF/OFFICE OF THE STATE FIRE MARSHAL
PIPELINE SAFETY DIVISION**

The pipelines regulated by the State Fire Marshal are generally those major lines that transport crude oil from production fields or terminals to the refining centers in the Los Angeles Basin and East Bay areas as well as those lines that transport refined products [gasoline, diesel, jet fuel, etc.] from the refineries to storage terminals or across the state line. Specific definition of these regulated pipelines may be found in Section 51010.5 (a), California Government Code, and Section 195.1, Title 49, Code of Federal Regulations. SFM-regulated pipelines do not include those lines within production fields, marine terminals, refineries or bulk loading facilities.

STATUTORY AUTHORITY

Section 51010, California Government Code specifies that "It is the intent of the Legislature ... that the State Fire Marshal shall exercise exclusive safety regulatory and enforcement authority over intrastate hazardous liquid pipelines, and may act as agent for the United States Department of Transportation ... as to those portions of interstate pipelines located within this state...." The State Fire Marshal has maintained its classification as an Interstate Agent with USDOT since 1987. Currently, SFM regulates approximately 6,400 miles of hazardous liquid pipelines within California (5000 miles intrastate; 1400 miles interstate).

FUNDING SOURCES:

The program is supported by a combination of fees (deposited in the Hazardous Liquid Pipeline Safety Fund) and annual federal grant from US DOT's Office of Pipeline Safety. There is no General Fund allocation for this program. Operator fees are based on an annual \$3000 per-company charge plus \$150 per mile for intrastate pipelines or \$100 per mile for interstate pipelines. Approved hydrostatic testing companies are charged an annual fee of \$1,500 per company.

PROGRAM DESCRIPTION

In accordance with federal law, no state may regulate hazardous liquid pipelines unless their program is certified annually by US DOT's Office of Pipeline Safety. SFM's program has been certified since 1981. This certification assures that the program complies with minimum federal standards for inspector qualifications, program procedures, documentation and recordkeeping, inspector training and Fire & Life Safety. A detailed program audit is conducted by USDOT each year and SFM receives a rating based upon set program standards. In 2001 (the latest audit year) the SFM program received a rating of 100%.

1. Inspections

Pipeline safety inspections may be separated into two categories: *specialized* and *standard* inspections. The *specialized* inspection includes construction inspections, component installation, etc. The *standard* inspection is conducted periodically for each pipeline system on a one to three year cycle depending upon the past compliance, leak history and other criteria. A standard inspection includes a detailed analysis of company records as well as an on-site inspection of the pipeline, pumping stations and control facilities.

2. Inspectors

Each Pipeline Safety Engineer has an educational background in an engineering field (i.e., civil engineering, mechanical engineering, petroleum engineering, etc.) as well as extensive experience in the subject. (Currently, SFM staff includes a registered professional engineer. In addition, one engineer has had more than 50 years of experience in the petroleum pipeline industry.) As part of the USDOT certification process, SFM's engineering staff also has completed a series of federally-mandated training classes offered at the Transportation Safety Institute in Oklahoma City, OK. In keeping with SFM's regulatory authority, each Pipeline Safety Engineer is also a sworn peace officer.

3. Incident Investigations

Upon notification of an incident involving a pipeline, the Supervising Pipeline Safety Engineer assigns a Pipeline Safety Engineer to investigate the situation. The SFM engineer responds to the incident, assesses the situation, confers with the pipeline operator on the appropriate mitigation measures or repairs and remains on-site as long as needed. The engineer also acts as a technical resource for the emergency responders at the site (e.g., fire, police, environmental health, public works, etc.).

Each investigation is documented and a detailed investigation report filed. As appropriate, the engineer may require that the pipeline operator arrange for testing or analysis by an independent third-party laboratory approved by SFM. In addition to conducting this investigation, the engineer also coordinates with federal, state and local agencies who are responsible for clean-up oversight (e.g., Department of Fish and Game/Office of Oil Spill Prevention and Response, US Coast Guard, EPA, local environmental health department, etc.).

4. Enforcement Action

Each violation of federal or state code identified by an engineer during an inspection or investigation is documented. Depending upon the nature of the violation, the pipeline operator is given a written notice demanding correction without penalty (Compliance Letter) or is served with a formal correction notice that includes a civil penalty assessment. The pipeline

operator must respond to each notice within 30 days with a plan for correcting the violation. Engineering staff monitors the compliance action until the violation is fully corrected.

5. **Pipeline Accident Reporting:** With very few exceptions, every rupture [including leak that occurs during hydrostatic testing] must immediately be reported to the local fire department and to the Warning Center at the State Office of Emergency Services (OES). OES then notifies appropriate regulatory agencies. In the case of SFM, the Supervising Engineer is immediately sent a fax report from OES. He then assigns one of the engineering staff to begin an investigation of the situation. After-hours notifications are made by telephone directly to the Supervising Engineer.

The pipeline operator must also report accidents meeting certain criteria to the National Response Center. This criteria includes: (1) explosion or fire; (2) loss of 50 or more barrels of liquid; (3) death of any person; (4) bodily harm to any person resulting in loss of consciousness, medical treatment, disability which prevents completion of normal duties for more than the day of the accident; (5) estimated property damage (including cleanup and recovery) exceeding \$50,000. While SFM also receives a copy of this notification from the National Response Center, this usually takes 12-24 hours longer than the notification received from OES.

6. **Pipeline Design and Construction:** Minimum standards for pipeline design and construction is established by USDOT in 49 CFR 195. This regulation prescribes the minimum requirements for new pipelines systems and for relocating, replacing or otherwise changing existing pipelines systems. Subjects covered in this regulation include, design temperature, variations in pressure, internal design pressure, external loading, specifications for pipe, valves and fittings, branch fabrication, flange connections, and aboveground breakout tanks. Specifications and standards from NFPA, AGA, API, ANSI, ASME, ASTM, and others are adopted by reference where applicable.

Pipeline Safety Engineers from SFM conduct frequent, unannounced construction inspections. For complicated, large or sensitive projects, SFM may maintain engineering staff on site throughout the entire construction process.

Because hazardous liquid transportation pipelines are constructed of steel pipe, particular attention is taken to assure proper grade of pipe is used and welds and welding inspections are conducted by as specified. Each welder must present documentation that s/he meets minimum ASME qualifications. Each weld undergoes nondestructive testing to assure its integrity.

Before being buried, the pipeline must be protected by external coating. SFM engineers monitor the coating to assure that it is of appropriate material for adhesion, ductile strength and damage resistance and is not nicked or scraped during the construction process. The steel pipe is also provided with a cathodic protection system to mitigate external corrosion. SFM engineers monitor the installation of test leads, anodes and other components of this system.

7. Pipeline Operations and Maintenance

a. Valves

In general, valves must be located (1) on the suction and discharge ends of pump stations, (2) on each line entering and leaving breakout tank facilities, (3) in various locations along the mainline, (4) on each lateral from the trunk line, and (5) on each side of a water crossing in excess of 100 feet. Locks and other protection must be provided for each valve to protect it from vandalism. At least twice each year, the operator must inspect each mainline valve to determine that it is functioning properly.

b. Pumping Facilities

SFM engineering staff monitors the overpressure facilities, emergency shut-down devices, vapor detectors and fire protection equipment at each pump station. At least once each year, the pipeline operator must test every pressure-limiting device, relief valve, pressure regulator or other pressure-control equipment to determine that it is in good working order.

c. Aboveground Breakout Tanks

Aboveground breakout tanks must be constructed in accordance with API standards. In addition, the tanks must be provided with emergency spill containment, normal/emergency relief venting. The pipeline operator must inspect each breakout tank at least one each year.

d. Internal Corrosion Control

The corrosive effects of the particular hazardous liquid transported through each pipeline must be determined and adequate steps taken to control internal pipe corrosion. Corrosion inhibitors are used to mitigate this problem. At least twice each year, the pipeline operator must examine coupons or other types of monitoring equipment to determine the effectiveness of the inhibitors or the extent of any corrosion.

e. Rights-of-Way Inspections

The pipeline operator must inspect the surface conditions on and

adjacent to every portion of a on-shore pipeline right-of-way at least every three weeks. This inspection may be made by walking, driving or flying the right-of-way. Pipelines which cross under navigable waterways must be inspected at least every five years.

f. **Damage Prevention Program**

Since 1995, each pipeline operator must maintain a written program to prevent pipeline damage from third-parties (i.e., excavators, farm machinery, vandalism, etc.) Each pipeline operator is a member of Underground Service Alert (USA), the one-call notification center for California and Nevada.

8. **Procedure Manuals - Operations and Maintenance**

Minimum standards for pipeline operations and maintenance are established by USDOT. The operator must establish a detailed, written procedure manual for conducting each normal pipeline operation and for all maintenance activity. The manual must be reviewed and updated at least once each year and is checked by SFM engineering staff during our periodic comprehensive inspections. The manual must include procedures for issues such as:

1. Maintaining construction records, maps, and operating history
2. Maintaining data that would be needed to comply with accident reporting mandates
3. Operating, maintaining and repairing the pipeline system
4. Determining which pipeline facilities are located in areas that would require an immediate response to prevent hazards to the public if the facilities failed or malfunctioned
5. Analyzing pipeline accidents to determine their cause
6. Starting up and shutting down any part of the pipeline system
7. Abandoning pipeline facilities, including safe disconnection from an operating system, purging of combustibles and sealing abandoned facilities left in place
8. Establishing and maintaining liaison with local emergency response officials
9. Periodically reviewing the work done by the operator's staff to determine the effectiveness of the procedures used in normal operation and taking corrective action where deficiencies are found.

9. Procedure Manuals - Abnormal Operations and Emergencies

Minimum standards for abnormal pipeline operations are also established by US DOT. The operator must establish a detailed, written procedure manual for providing safety when operating design limits have been exceeded and to provide safety when an emergency condition exists. The manual must be reviewed and updated at least once each year and are reviewed by SFM engineering staff during periodic comprehensive inspections. The manual must include procedures for issues such as:

- ° Responding to, investigating, and correcting the cause of the problem (i.e., unintended valve closure, loss of communications, increase or decrease in pressure or flow rate, component malfunction, etc.)
- ° Checking variations from normal operation after the abnormal operation has ended at sufficient critical locations to determine the continued integrity and safe operation of the pipeline.
- ° Notifying responsible emergency responders and operator staff when notice of an abnormal operation or emergency is received.
- ° Promptly and effectively responding to a fire or explosion occurring near or directly involving the pipeline, accidental release of hazardous liquid, operational failure causing a hazardous condition and natural disaster affecting the pipeline.
- ° Having staff, equipment, instruments, tools and materials available as needed at the scene of an emergency.
- ° Taking action such as emergency shutdown or pressure reduction to minimize the volume of liquid that is released during a failure event.
- ° Minimizing public exposure and probability of accidental ignition by assisting with evacuation, traffic control, etc.
- ° Providing post-accident evaluation to determine whether the procedures were effective and taking corrective action where deficiencies were found.

10. Pipeline Integrity Testing

One of the primary ways in which California pipeline safety standards exceed the minimum federal standards is in pipeline integrity testing. California law mandates that each pipeline system be tested at least every

five years by an independent third-party approved by SFM. In these hydrostatic tests the hazardous liquid is removed from the pipe and replaced with water. The pipe is then pressurized to 125% of the actual pipeline operating pressure and held for eight hours. Testing results are submitted to SFM for review and concurrence. Tests are randomly witnessed by SFM engineers. In certain cases, SFM has approved the use of internal inspection tools ("smart pigs") in lieu of hydrostatic testing. In these cases, the test results are also submitted to SFM for review and concurrence.

11. Operator and Emergency Responder Training

Each pipeline operator is required to provide a continuing training program for operations and maintenance personnel. SFM also conducts training classes for operator staff to assure that personnel understand the applicable code requirements. In addition, SFM conducts training classes for emergency responders so that firefighters understand the basic design and operations of pipelines as well as the potential hazards involved during an emergency incident.

12. Mapping and Data Systems

SFM has developed a GIS-based pipeline mapping data base to provide basic pipeline location data to its own staff as well as emergency responders and other government agencies. The system is fully compliant with the National Pipeline Mapping System established by US DOT. While originally designed to allow public access via the internet, since the tragedy at the World Trade Center in 2001, US DOT has requested that SFM secure this data and that it not be shared with the general public.

**Questions/Responses for Senate Rules Committee
Provided by Susan H. Hildreth, State Librarian
March 28, 2005**

1. Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as State Librarian?

First of all, it is a great honor to serve as the State Librarian of California; and I hope I can follow in the great tradition of esteemed former State Librarians. One of my key goals is to steward the future of the California State Library. This institution has been subject to severe budget reductions and, although it still survives, is not able to provide all the services that our state workforce needs to do their jobs effectively. My goals include:

- Restore the book budget from its 75% reduction – we must provide our workforce with current print and electronic resources
- Develop a service plan and staffing structure so that the State Library can provide effective service with current diminished staffing levels and strategically add positions to enhance direct service to our customers
- Deploy electronic resources seamlessly so that the State Library becomes an icon on every state workers' desktop computer
- Provide services tailored for the needs of specific agencies – add value to material and services they may already be receiving from the State Library
- In collaboration with other key partners, develop a sustainable method for distributing, managing and preserving electronic government publications

It is also critical that the State Librarian focus on the future of all libraries in California, and, in particular, our public libraries. I must be able to envision the future for those libraries and to articulate it to elected officials, library supporters and library workers. My goals include:

- Continue successful programs that provide benefit to library users and libraries
- Fund the Public Library Foundation program at its authorized level
- Expand resource sharing activities and funding for those activities
- Expand literacy services to all public libraries and funding for those services
- Develop a strategic plan to use Library Services and Technology Act (federal funds provided to California) as effectively as possible

2. Have you formed an assessment of the State Library's current financial condition and prospects that you could share with this committee? Given the state's recent cutbacks in support of the Public Library Foundation, what are your views about the state's aid to local libraries?

MAR 29 2005

California State Library financial condition

Although I may not completely understand all of the ramifications and rationales that went into the budget decisions of the last few years, I do understand that many difficult choices had to be made, and that the State Library was not the only state department to undergo drastic reductions in resources, programs, and services. I am also cognizant of, and grateful to, the many members of the Legislature who helped to hold the line on State Library budget reductions. Without your help the State Library would be in far worse shape than it is. But I would be less than truthful if I told you that all is well with your State Library – we are, in fact, in a precarious situation.

Setting aside the State Library's two general obligation bond funded programs – the Public Library Construction and Renovation Bond Act program and the Cultural and Historical Endowment program, which have suffered only peripherally from the state's current fiscal crisis, I see that general fund support for State Library programs and services is down over \$55 million from its 2000/2001 level – that's about 55%. Operationally, the State Library's total support for the services that we provide directly to you and to the public is down by over 25%. One out of every four of our previously authorized positions has been eliminated and our library material budget, what we commonly call the "book budget", has had to be reduced by nearly two thirds. Our drastically-reduced purchasing power severely impacts our ability to keep the materials collection current for our users.

I think it is a great tribute to the dedication and skill of the State Library staff that the quality and quantity of the services we are providing to you and the public, while certainly impacted by these drastic resource constraints, has not been reduced by anything like the percentage reductions in resources. With great creativity and remarkable energy, they have managed to keep the negative impacts to a minimum and in some notable instances have even moved forward and improved services – but I have to tell you that this remarkable performance cannot be sustained indefinitely.

I think one of the great challenges I face at the beginning of my tenure is to formulate a plan for how the State Library can continue to provide the best and most timely information services to state government, improve library service statewide, and build upon our one hundred fifty-five year tradition of excellence. It will then be my charge to meet with you and enlist your support for that plan.

Public Library Foundation and other local assistance programs

In terms of the State Library's local assistance programs, the Public Library Foundation (PLF) program, has been reduced by 75% (from \$56.87 million in 2000/2001 to \$14.36 million in the current year), and another, the Library of California program, has had its funding reduced to zero. In the 2005/2006 proposed budget, PLF is scheduled to be reduced from \$14 million to \$12.2 million; and there are 5% reductions scheduled for the interlibrary loan and direct loan program (\$529,000) and local literacy programs (\$276,000). State aid to local libraries in California has never been a major source of income. PLF is critical to many local libraries, particularly for their book budgets, but it has become increasingly unpredictable. It has never been fully funded since it was

initiated in 1983. In 2000/2001, it reached its highest funding level of almost \$57 million, which is still short of its authorized level of about \$80 million. Although PLF does not represent a large contribution to public library service, it plays a very critical role.

I think that in a democracy the state has a compelling interest in an informed and educated populace and that investing in local library service is a very cost effective method of helping to achieve that. I think it is very important to provide direct support for local public library service through programs like the PLF, but I also think that is equally important for the state to support resource sharing programs, such as the interlibrary loan and direct loan programs of the California Library Services Act (CLSA), and the CLSA cooperative public library system programs. These programs help to smooth out the differences between high and low wealth areas, compensate for geographic barriers and extend the benefits of good library service to all Californians. I also think that the state can be of immense help in reaching out to underserved groups by mobilizing the public library community – a good example of this are the literacy services that the State Library has established in public libraries throughout the state. There is also a clear role for the state in assisting local government in renovating and constructing library facilities. With regard to this last item, I want to thank all of you who helped to pass Senator Alpert's SB1161 last session. I am confident that the voters will approve that bond measure when it goes to them in June of 2006.

I think that California could, and should, do much more in these areas to assist the development and delivery of local library services. Existing state legislation, if it could be supported at its authorized levels would produce returns on those investments at many times their cost.

3. With the advent of electronic publishing and the digital library, what role do you see for libraries in the future?

I think reports of the demise of libraries are greatly exaggerated. I am somewhat reminded of the great fears in the 50's and 60's that television, and then videotape, would mean the end of the motion picture industry. The situation with the "digital age" and libraries is not really analogous, but there are parallels. TV and the videotape recorder actually turned out to open additional markets for product – and I see something similar happening with the increasing availability of digital information. Most libraries, including the State Library, now offer access to the Internet and other digital information resources. The availability of these resources in public libraries seems to be actually increasing usage rather than the opposite.

At the State Library, the availability of these digital resources and the opportunity for state employees to have near universal access to the Internet has allowed us to place new and better information sources right on our customers' desks. Our complete library catalog is available via the Internet and we have negotiated extremely favorable rates to make several proprietary databases available throughout state government, right on your

staff's desktop computer. I also believe that there is an increasing need for the more sophisticated search skills of professional librarians – there is considerably more out there on the web than is revealed by a few search engine inquiries. Librarians have now become navigators on the sea of the Internet and are able to assist you and your staff in using the myriad of electronic resources as effectively as possible.

Libraries in our communities as well as on our college campuses have become gathering places for neighbors and students. The role of the library is moving from that of the information stronghold – because that truly is the Internet – to the community's living room. The library provides a neutral, comfortable venue for neighbors to meet neighbors and to discuss a variety of exciting topics. Heavy use of the Internet has resulted in much personal isolation, which can be combated by a visit to the neighborhood library or campus learning center. The popularity of one book – one city reading programs, often organized by local libraries, and both home-based and library-based book clubs attest to the fact that libraries are fulfilling an important civic role in bringing the diverse members of our communities together.

As long as we continue to be an information and knowledge based society and value community interaction and discussion, I believe that libraries will have a central, viable and, I hope, well-supported function to perform.

4. Please discuss your experience with introducing radio frequency identification technology at San Francisco's libraries. In particular, please comment on your assessment of the benefits of the technology. Also please comment on how you addressed concerns raised by opponents of the technology.

San Francisco Public Library RFID project

Radio frequency identification (RFID) technology has been implemented by several major libraries successfully both nationally and internationally. I introduced the application at the San Francisco Public Library because I believed that the technology would facilitate self-service activities, lessen workers' injuries and provide for enhanced collection management. "Harnessing the power of the patron" in book check-out and other repetitive processes results in cost avoidance in that rising circulation can be handled without additional staff. Also, those staff formerly working at a circulation desk can be redeployed to directly assist customers with other information needs.

Although the ACLU and the Electronic Frontier Foundation were aware of RFID implementation in other northern California libraries, they decided to express their concerns regarding this technology when it was proposed for the San Francisco Public Library. The library took several actions to address these concerns. The library held a public forum that included representatives of many agencies who had a broad range of experience with RFID technology. Extensive research was done by library staff regarding the technical workings of the RFID system; and the Public Health Department also conducted studies regarding the ergonomic impacts as well as electronic emissions

of RFID technology. All information was shared with the public at public meetings of the Library Commission and on the Library's website.

RFID technology has not yet been implemented in the San Francisco Public Library. Due to potential budget reductions, funds identified for RFID technology that were on reserve by the Board of Supervisors, subject to Board approval for expenditure, were not utilized in 2004/2005. The Library has included a request for RFID funding in the 2005/2006 budget request and is facilitating a public advisory body to review the funding request and implementation plan.

In a broader context, are there privacy and civil liberties issues you think should be addressed as the technology is introduced? Do you believe that introduction of the technology in libraries represents the state's "approval," or sanction a broader use of the technology? Will introducing the technology at the local library accelerate the use of the technology as identifiers and tracking mechanisms? Does the State Librarian have a role in facilitating or regulating the introduction or use of this technology?

As RFID technology is introduced, it is very important to understand the plan for its use. RFID tags can be used very restrictively to prevent the possibility of any personal data being available. At the San Francisco Public Library, RFID tags in books will only contain an identifying number for the book. Information about the customer borrowing the book and/or the title and subject of the book reside in the library's online system and can not be accessed through the RFID tag. If a scanner were developed that could read an RFID tag at a great distance, the only information that could be found would be a number identifying the book. Although there may be some privacy concerns regarding RFID technology, I believe there has been much misinformation generated in the media about the technology; and I believe that those concerns can be addressed with careful planning and implementation.

I don't believe that the introduction of RFID technology represents the state's "approval" or sanctions broader use. I believe that the implementation of this technology, as many other technologies that libraries have adopted over the years, is a local decision. The technology must work for the library, its customers and its community. I don't believe that introduction of the technology at the local library will accelerate the use of the technology as a tracking mechanism. In fact, because libraries have a very proud record of safe-guarding user privacy, I believe that the introduction of this technology in libraries is bringing privacy questions to the forefront. Privacy concerns are being dealt with by the establishment of best practices by state and national library associations and by discussions regarding product development with vendors. The State Librarian does not have a specific role in facilitating or regulating the introduction of this technology. The State Library does not normally fund any kind of local technology applications, and therefore would not be in a position in which any specific technology would be sanctioned by use of state or federal funds. I would not see the State Library having a role in this technology unless authorized to do so by the Legislature or Governor.

5. What role should the State Library play in preserving information that is stored in a digital format?

The State Library must play a key role in preserving digital information as well as making that information accessible over time. As an increasing amount of government information is published in digital formats, the challenge of preserving these materials and making them accessible to the public becomes more urgent. The State Library and archive agencies at the federal, state, and local levels have a great deal of difficult work to do if we are to avoid the permanent loss of important government publications and records. Methods must be found to systematically capture and preserve, store and catalog, and search and retrieve this information. I am also aware that there is legislative interest in this critical subject.

The problem is a complex one – particularly when you consider how rapidly the technology that supports the storage and retrieval of digital information is evolving and how much it has already changed in just the past few years. The State Library is involved in several initiatives all focused on digital preservation. The State Library sponsored a state working group to begin to address the many complex issues surrounding the problem. That group published a report last August that you can obtain on the State Library website. The report outlines a comprehensive approach to the problem that will require the cooperation of state level stakeholders, including the State Library, State Archives, General Services, and the state information technology policy and control agencies, and will certainly involve the setting of statewide policy for this critical matter.

The Library of Congress is also addressing this issue; and, through federal funds, is sponsoring the National Digital Information Infrastructure and Preservation Program. This program is seeking opportunities to establish collaborative relationships to preserve digital information that is both significant and at risk of loss. California is sending a four-person team comprised of representatives from the State Library, the State Archives and the Secretary of State to trainings in Washington, DC, and Albany, New York, to foster a shared approach to the responsibility of important digital content and a preservation infrastructure that addresses the unique needs of each state. Collaboration will be the key to success in digital preservation.

6. To what extent does the State Library have a role in enhancing literacy skills in the state?

The California State Library is recognized as a national leader in the provision of library-based literacy services. Since 1984 the State Library has provided funding and technical support to local public libraries throughout the state to establish and maintain adult and family literacy services. Every year since 1984 over 20,000 Californians improve their literacy skills through services offered by these library programs.

In March 2004, former State Librarian Dr. Kevin Starr reported to the Legislature on the successful integration of our four literacy initiatives into the integrated California Library Literacy and English Acquisition Services Program. In the 2003/2004 fiscal year literacy instruction was provided to over 103,075 adults and children in 106 participating libraries. The 2003/2004 state support for the program was \$5.3 million – but local libraries generated four times that amount from local cities, counties, and private sources. 12,000 volunteers donated over 740,000 hours to provide instruction to Californians striving to improve their literacy skills.

Library-based literacy programs play a unique role in the spectrum of adult education services. Library programs serve the adults who have not been successful in the school/classroom setting. The great strength of the library-based programs is the one-on-one tutoring that is so critical to students who have failed in mainstream school systems. Library-based programs complement other literacy services that are available through schools and workforce training agencies. I am dedicated to continuing this strong commitment to raising literacy skills. California's future depends not only on the skills of our workforce, but also on the ability of our populace to understand and participate in their government.

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APPEARANCESMEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

EVAN GOLDBERG, Consultant to DEBRA BOWEN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

ANDREA L. HOCH, Administrative Director
Division of Workers' Compensation

SENATOR CHARLES POOCHIGIAN

MARTIN BRADY, Executive Director
Schools Insurance Authority

NANCY AXTELL, Chair, Legislative Committee
California Coalition on Workers' Compensation
Director, Safety and Risk Management
PRIDE Industries

1 SUZANNE GUYAN, Director, Employee Benefits
Costco Wholesale

2 Chair, California Coalition on Workers' Compensation
3 California Grocers' Association

4 CATHY AGUILAR

5 San Diego County and Imperial County School Districts
Joint Powers Authority

6 SHANNON L. SMITH, Small Business Owner
7 Continental Labor Reserves, Inc.

8 RICK JONES, Owner
KBA Engineering Company

9 LUIS M. ESPARZA, Business Owner
10 Fox Enterprizes

11 CHARLES BACCHI
12 California Chamber of Commerce

13 MARK RAKICH
14 California Association of Joint Powers Authorities

15 WILLIE WASHINGTON
California Manufacturers and Technology Association

16 DAVE PUGLIA
17 Western Growers Association

18 KERRY LEE
19 California Restaurant Association

20 DENISE DUNCAN
Lumber Association of California and Nevada
21 California Independent Oil Marketers Association

22 DAVID SCHWARTZ, President
23 California Applicants Attorneys Association

24 PAUL CLAIBORNE
Injured Teacher

25 ANGIE WEI
26 California Labor Federation, AFL-CIO

27

28

1 KRISTIN TOWERS

Injured Professional Singer/Dancer/Actress

2 MARK HAYES, President

3 Voters Injured at Work.Org

4 PETER A. BALESTRIERI

5 Voters Injured at Work.Org

6 BARRY BROAD

California Teamsters Public Affairs Council

7 PEGGIE SUGARMAN, Executive Director

8 Voters Injured at Work.Org

9 CHRISTIE BOUMA

10 California Professional Firefighters

11 SCOTT HAYES

12 Voters Injured at Work.Org

13 RON FRYER

Voters Injured at Work.Org

14 ALLEN DAVENPORT, Director

15 Government Relations

16 SEIU

17 JOFRE C. DOLLESIN

Injured Worker, Department of Corrections

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: The next item is the consideration for confirmation of Andrea Hoch, who is the Director of the Division of Workers' Compensation.

There will be a one-hour time limit on pro and con, and questions from the dias will be referred to at the end rather than during the discussion.

Director Hoch, would you like to begin. I'm sorry, I didn't see you there, Senator. Senator Poochigian.

SENATOR POOCHIGIAN: Yes, Mr. Chair and Members, it's my pleasure to join you and to present to you and introduce Andrea Hoch. I am very pleased to have been asked to serve in this role.

She is eminently qualified to serve as Administrative Director despite or maybe because of the fact that she neither comes from the insurance industry, labor, nor the business community. Ms. Hoch worked at the Attorney General's Office from 1992 to 2004. She supervised the Tobacco Litigation Team as a supervisor and also managed at the Department of Justice the Energy Crisis Team.

While working in the General Law Section of the Department of Justice, Ms. Hoch was elevated by the current Attorney General to Supervising Deputy Attorney General and Senior Assistant Attorney General.

I believe that her selection by the Governor to take on this gargantuan task that she has undertaken is a wise one.

1 Before I go on with respect to her personal
2 qualities in terms of what she has done and -- what she has done
3 in the past and what she's done in connection with the job she's
4 been given, I'd like to refresh the Committee's recollection as
5 to why the Legislature debated and ultimately passed two waves
6 of significant workers' compensation legislation over the past
7 few years.

8 The second bill, SB 899, passing with only six No
9 votes in our 120-Member Legislature. First, California worker
10 compensation insurance costs rose from \$9.1 billion total in
11 2000 to 21 billion-plus by 2003, and without reforms, estimates
12 were that by 2006, the costs would reach \$32 billion.

13 California employers were paying at the height of
14 the crisis on average \$6.37 per \$100 of payroll for workers'
15 compensation, when the average national cost was \$2.68. A
16 detailed look at the system reveals why costs were skyrocketing.
17 First, medical costs in California had risen 111 percent between
18 1997 and 2002, more than double the national average in 2002.

19 A comparative study across 12 states by the
20 Workers' Compensation Research Institute concluded that
21 California's higher medical costs resulted largely from
22 over-utilization. The study found that California had more
23 visits per claim than any other state studied. The average
24 number of visits for more mature claims was 31 percent higher
25 for hospitals, 70 percent higher for physicians, and 150 percent
26 higher for chiropractors.

27 But our problem wasn't just on the medical side.
28 The subjectivity of our previous system resulted in

1 approximately 30 percent Of California's permanent partial
2 disability claims requiring legal action. This in a system that
3 was designed to be no fault.

4 Because of California's lack of definitive
5 standards for compensation for temporary or permanent disability
6 awards, workers were virtually -- workers with virtually
7 identical injuries with similar job descriptions, hurt in much
8 the same way at the same time, received vastly different awards
9 as well as treatment.

10 California also had the highest frequency of
11 permanent partial disability in the nation. Over 40 percent of
12 the lost time claims in California are paid PPD benefits. The
13 state with the next highest frequency is Oregon, where just over
14 30 percent of all lost time claims involved PPD.

15 Finally, California had the worst return-to-work
16 rate in the nation any way you looked at it.

17 So, after much debate, the Legislature responded
18 by first passing Senator Alarcon's bill, SB 228 in the year
19 2003. That bill focused on reining in medical costs and then
20 was followed by my bill, sponsored by the Governor, SB 899,
21 which passed in April of 2004. And that bill focused on the
22 indemnity side of the equation.

23 Ms. Hoch was given a monumental challenge when
24 she took this job, when she was recruited to take this job a
25 year ago. She has worked hard to implement 228, as well as
26 SB 899. SB 899 seems to be the focus of much of the concern
27 expressed by some -- by some -- with regard to workers' comp
28 reform. It's a bill that involves a lot of technical work.

1 There was -- when the bill was passed, a bill of
2 significant significance in every -- by every measurement in
3 terms of the issues involved as well as the volume, the words
4 that comprised the legislation, it required a great deal of
5 regulatory work, of study, and effort to seek to implement the
6 legislation by its own terms. It involved the establishment of
7 medical provider networks through the regulatory process,
8 independent medical review through the regulatory process,
9 permanent disability regulations, schedules and regulations, QME
10 reform, return to work changes, and predesignation of
11 physicians, all very significant issues, all requiring a lot of
12 personnel and a lot of very careful, detailed oversight led by
13 the candidate who's before you today.

14 Frankly, it's amazing to me that she accepted the
15 challenge and is undertaking this work, knowing, I assume, at
16 the outset that there would be controversy, that there would be
17 some very, very tough debate and tough times.

18 But I've gotten to know her, and I realize that
19 she is certainly up to the challenge, and perhaps, perhaps,
20 uniquely qualified, given her background.

21 Throughout this almost year-long effort, Andrea
22 has met with all of the interest groups who have expressed
23 concerns, convened working groups on all of the major reform
24 proposals, and held numerous public hearings. She was
25 professional and, given the task at hand, provided the necessary
26 and fair-minded stewardship get the job done.

27 She is not an ideologue. There is nothing about
28 her in terms of her performance in the task at hand nor

1 reflected in her background that would suggest otherwise, that
2 would suggest anything other than fair-mindedness and a dutiful
3 effort to follow the law.

4 Workers' compensation reform, the system, raises
5 some pretty emotional issues. I don't know anyone who is fully
6 satisfied with the system before or after the reforms. It's not
7 a perfect system. The reforms weren't perfect. No one said
8 they were. I as the author made it clear in my statement before
9 the vote last year that it wasn't perfect; more work would be
10 needed. The Governor said it wasn't perfect, but it was
11 necessary given the challenge we faced and the awful effect that
12 the skyrocketing costs of workers' comp were having, not just on
13 the private sector, but on the public sector, on private -- on
14 nonprofit agencies and so on.

15 The tone of the political discourse on the issue
16 of workers' comp and on this candidate has become, regrettably
17 somewhat shrill, thankfully by a minority. But nonetheless,
18 there has been considerable acrimony attached to the issue.

19 But to do the job, to fix and repair the system,
20 we've got to move on. We've got to be true to the meaning of
21 the statute, the intention of the Legislators who voted for the
22 changes, and allow the regulatory process to work and to
23 continue to work. And where changes are necessary, I believe
24 that this Administrative Director before you today has all of
25 the talent, the skill, the aptitude, and the commitment to do
26 the right thing. She has the temperament and the sense of
27 dedication, I believe, to work to try to deflect and reduce
28 tension and look for common ground.

1 She deserves in my judgment not only
2 confirmation, and I thank those who are prepared to vote for her
3 because you're doing the right thing, she also I believe has
4 earned our praise, and I thank her for what she's done. I
5 appreciate her courage in the face of tremendous obstacles, and
6 I appreciate especially her judiciousness in the way that she
7 has undertaken this very, very lofty responsibility.

8 Thank you.

9 CHAIRMAN PERATA: Thank you, Senator.

10 For those of you who have bewildered looks on
11 your face, Insurance is meeting next door. This is normally
12 their room, but they're across the way.

13 SENATOR POOCHIGIAN: Mr. Chairman, I'm sorry, if
14 I may, I have a little handout and I'll be out of your way.

15 CHAIRMAN PERATA: You're welcome to stay.

16 Ms. Hoch.

17 MS. HOCH: Good afternoon.

18 I'm Andrea Lynn Hoch, as you all know. I'm the
19 Administrative Director of the Division of Workers'
20 Compensation.

21 It's been an honor to serve as Administrative
22 Director this last year. A very challenging year, no doubt about
23 that.

24 First of all, I want to thank the support that
25 I've had from my family, who is here with me today, and also
26 from the Governor and the Governor's team, who is also here with
27 me today. Without them, I could not have persevered through
28 this last year.

1 The reason why I was selected. I'm known to be a
2 strong, effective and fair manager. As Senator Poochigian said,
3 I am not associated with workers' comp. I came in new to
4 workers' compensation. I'm not from business. I'm not from the
5 insurance industry. I'm not from labor. I'm not from any
6 member of the workers' comp community.

7 I've been a public servant since 1987, and that's
8 what I continue to do.

9 I'm a quick learner. I ask lots of questions. I
10 think if you ask any of any staff, if you ask any of the members
11 of the advisory groups, I ask lots of questions, have fresh eyes
12 to the issues in workers' compensation, and can address the
13 issues in a new way.

14 I'm also an attorney, which is an asset in this
15 position as well. I enjoy challenges in making changes to the
16 workers' compensation system for the employer and the worker.
17 In my viewpoint, the employer and the worker are the only two
18 real stakeholders in the system. Others may call themselves
19 stakeholders, but in all honesty, they are merely service
20 providers who often have their own interest to pursue.

21 The nature of the workers' compensation system.
22 I've learned a lot this last year. It's impossible to reach
23 consensus on any issue, in my opinion. It's impossible for all
24 to agree with my decisions.

25 What I can offer, however, is a fair and
26 deliberative and inclusive process by which I make informed
27 decisions. I do that by having an internal working group in the
28 Division of Workers' Compensation. I also have advisory groups

1 set up which are diverse and actually, with the interest with
2 SB 899, quite large. Usually 25 to 30 individuals attend each
3 one or more.

4 I personally review the comments. I personally
5 attend the advisory group meetings to engage in discussions on
6 issues, and I meet with my team afterwards to discuss the issues
7 and come up with an informed decision.

8 All my regulations, all the Division's
9 regulations, are based on statutory language and statutory
10 intent. As an attorney, I am very mindful of my statutory
11 authority and will often ask members who have suggestions to
12 provide me with the statutory authority to support the proposed
13 regulation.

14 Reasonable minds might differ as to my
15 interpretation or the Division's interpretation of the statute
16 in implementing the regulations. However, there's a legal
17 process to resolve those disputes.

18 Let me talk briefly about the accomplishments
19 this past year by the Division. I am proud of the Division and
20 the accomplishments we made.

21 When I came on board, many people said we
22 couldn't do it. The time lines and deadlines in SB '899 were
23 rather ambitious, but we met all of them last year. I was able
24 to implement medical provider network regulations by the
25 November 1 deadline. We are accepting applications, and
26 actually as quick status report, we have right now 885
27 applications that we've received. We have approved 504 medical
28 provider network applications. Every approval has been made by

1 substantive review. There have been no default approvals by my
2 team.

3 Independent medical review regulations were also
4 adopted on time, which is part and parcel of the medical
5 provider networks.

6 Permanent disability rating schedule regulations
7 were adopted on an emergency basis on January 1, 2005, again
8 meeting the statutory deadline.

9 Let me talk about, if I may, 2005 priorities.
10 There's a lot. There's a lot to keep me busy for years to
11 come.

12 Medical treatment utilization guideline
13 regulations are -- a draft is out. This is part of SB 228,
14 actually. Supplemental job displacement regulations, also
15 called vouchers, are underway, almost finalized. Return to work
16 regulations, predesignation regulations are also underway with
17 advisory groups and draft proposals out.

18 Penalty assessments for violations of utilization
19 review and violations for unfair business practices of denying
20 or delaying treatment are also under way.

21 Benefit notices are under way as well, which is
22 actually part of AB 749.

23 Qualified medical evaluator regulations are also
24 under way. Electronic billing, medical data collection, and
25 last but not least, we will meet the challenge of fee schedules
26 in 2005. It's an ambitious, very ambitious list for something
27 that I believe I can accomplish, and work with my team and the
28 advisory groups, and the members of the workers' compensation

1 employers, many workers continued to complain that they were not
2 fairly compensated for their injuries. It was very apparent
3 something needed to be done. The system was badly broken, and
4 it was in desperate need of repair.

5 Thanks to the California Legislature and
6 Governor, something was done. They enacted AB 227, SB 228, and
7 SB 899. This was a huge step in putting something in place that
8 would give relief to California employers, while at the same
9 time increase benefits to injured workers that were most
10 deserving. This brought California more in line with similar
11 work comp regulations that are found in many other states.

12 However, the work was not done with the signing
13 into law these reforms. Instead, it had just begun. The next
14 step was to find someone to review the laws and write
15 regulations. Last year, Andrea Hoch was appointed to do just
16 that. In a relatively short amount of time, Andrea successfully
17 completed this task.

18 Unfortunately, as is true with any new laws, the
19 regulations enacted were not popular with everyone. This is to
20 be expected, as we all know a change of any kind, whether it be
21 good or bad, creates confusion. And until people fully
22 understand the reasons for the changes, they are reluctant to
23 accept them.

24 However, the regulations promulgated by Ms. Hoch
25 currently reflect the language of the law, and really will
26 eventually benefit the majority of California employees and
27 employers. Because the reforms are in their infant stage, it's
28 too soon to know the total effect they will have on the overall

1 community.

2 Goals for the Division. Processing and resolving
3 workers' compensation claims in an efficient, effective way so
4 that the users of the system can get resolution of their
5 claims. That is something that I'm working on with the
6 Adjudication Unit.

7 I'm continuing my recruitment efforts to hire
8 additional staff to meet the challenges of implementing the
9 reform legislation. I'm hiring high quality staff in all 24
10 district offices. To date, all of the Call Center, which is a
11 separate office that handles work calls from anyone who has a
12 question, is fully staffed as of January 2005. As one can
13 imagine, the level -- the number of calls increased with the
14 passage of SB 899 because there were more questions.

15 I have virtually all workers' compensation
16 administrative law judge positions filled, as well as support
17 staff on its way.

18 I've worked on improving the quality of
19 information available on the web site, so that again,
20 information is available to the users of the system in a
21 user-friendly, comprehensive manner, and can be easily located
22 on the web site itself. That was not the case when I came on
23 board.

24 I'm also revitalizing the Injured Worker
25 workshops in all 24 district offices. When I came on board,
26 these workshops had dwindled in size and number in 2000 and 2001
27 due to budget and staffing reductions. I'm proud to say that we
28 have statewide training scheduled so that all workshops are

1 going to be consistent on a statewide basis, and they are going
2 to be set at times that workers can actually attend.

3 I'm also -- the bottom line is, I want to manage
4 the Division to make the workers' compensation system more
5 efficient, provide timely and effective medical care and
6 benefits to the injured workers so the workers can return to
7 work, while achieving cost savings in the aggregate. That's a
8 tall order, but it's something that I believe the Division and
9 myself can achieve.

10 This all leads to what really needs to happen in
11 the workers' compensation system, is a change in the culture.
12 When I came on board, and what I first want to pass, is that the
13 focus has been on compensation for a disability and retirement
14 from the workforce. We need to redirect our focus on the
15 ability of the worker to return to work. And that is the goal
16 of what I want to achieve in implementing SB 899.

17 The focusing on the ability is a win-win for the
18 employer and the worker because you end up treating the
19 employee's, the worker's work-related injury effectively and
20 timely with the goal of getting that worker back to work.
21 Again, a win-win for the employer and the worker, who are the
22 only two real stakeholders in the system.

23 I need to talk about how SB 899 does that.
24 SB 899 provides immediate medical care upon injury before a
25 claim is accepted or rejected. Timely and effective medical
26 care is provided through the creation of medical provider
27 networks and treatment based on evidence-based guidelines so
28 that we have good outcomes.

1 We have the new permanent disability rating
2 schedule that is in effect, which is based on objective medical
3 evidence rather than basing disability on subjective factors and
4 work restrictions. This will result in more accurate ratings
5 for disabilities.

6 We also have the return to work incentives for
7 the employers, which again is a win-win for the worker.

8 The workers' compensation system was in crisis
9 prior to SB 899. It didn't happen overnight, and the
10 improvements will not happen overnight. It will take time to
11 implement the reform measures, but I believe under my leadership
12 the Division has been able to meet the timelines and have an
13 effective, inclusive process so that my decisions are the most
14 informed and will benefit the workers' compensation system and
15 improve the system overall.

16 And I look forward to the opportunity to continue
17 serving in this role, if that's the wish.

18 Thank you.

19 CHAIRMAN PERATA: Thank you.

20 Would you like to introduce your family?

21 MS. HOCH: Oh, sure. They're in the second row.
22 My parents, Nan and Orie Hoch; my sister Brenda Sunseri; my
23 husband Steve Egan; and my brother-in-law Tom Egan; and actually
24 one of my best friends Robin Ritts.

25 Thank you.

26 CHAIRMAN PERATA: Welcome.

27 I'd like to have those who are in favor of the
28 nominee come forward and ask that there be no repetitious

1 testimony, and keep it as brief as you can. And if you just
2 want to state your name and affiliation, that would be
3 wonderful.

4 We also have an hour time limit, so the longer
5 you go on, somebody else gets cheated.

6 MR. BRADY: Good afternoon, distinguished
7 Members of the Senate Rules Committee. My name Martin Brady.
8 I'm the Executive Director for Schools Insurance Authority, a
9 not-for-profit, self-insured joint powers authority,
10 representing 34 school districts in Northern California.

11 We have some 300,000 students, approximately 500
12 schools, and districts from Hayward Unified to close to Lake
13 Tahoe.

14 I'm here today in support of Andrea Hoch as the
15 Administrative Director.

16 I'm also active in various subcommittees with the
17 California Coalition on Workers' Compensation, and I wanted to
18 briefly tell you how workers' compensation has affected our
19 school districts.

20 The mission of Schools Insurance Authority, which
21 was founded in 1974, was to protect the human and financial
22 resources of its member districts. Our insurance programs are
23 directly funded by contributions from our member districts.
24 Monies that are not needed for claims purposes may be returned
25 to our members in the form of dividends and rate credits. Our
26 Board of Directors is made up of school superintendents and
27 administrators, and our Executive Director is guided by our
28 Executive Committee on a monthly basis.

1 SIA workers' compensation program was established
2 in 1977. It's self-insured and self-administered up to \$500,000
3 per claim. At that level, we joint purchase in the marketplace
4 and continue to provide coverage up to 25 million per claim.

5 Clearly, after 18 years in working with school
6 districts and struggling with workers' compensation, it was
7 clear to all that we were in a great deal of pain prior to
8 reform. I would say that the system was clearly broken, and
9 that we need change.

10 Prior to reform, costs were escalating so
11 dramatically year to year that many of our school
12 superintendents referred to workers' comp as the program that
13 was encroaching on the general fund of the school districts. We
14 were designed as a pool that could try to help districts protect
15 themselves from the peaks and valleys of the marketplace, and we
16 were finding it very difficult to be able to do that.

17 On average, school districts receive
18 approximately \$4700 dollars per student from the state per year,
19 some a little higher, some a little lower, depending on the type
20 of district that they are.

21 Now, by the time the school bell rings at the
22 beginning of the year, 85 to 90 percent of the school district's
23 budget has been clearly marked for salaries and benefits of
24 school district employees, leaving only 10 to 15 percent for all
25 other services, including supplies, gas for the bus, and yes
26 indeed, workers' compensation.

27 At a time when districts are cutting millions of
28 dollars from their budgets, they're faced with very difficult

1 decisions between cutting counselors, closing libraries,
2 athletic programs, band uniforms, and schools themselves. And
3 unlike private business, a school district cannot raise prices
4 for goods and services. It must absorb the increased costs by
5 cuts that can directly affect the classroom.

6 However, post reform, there are signs of
7 improvement, and I want to touch on a few of those that we've
8 been able to detect as a direct result of the reform.

9 I would say that the reform addressed many of the
10 inequities and cost drivers in the workers' comp system, while
11 at the same time preserved the rights of injured workers to
12 prompt, appropriate medical treatment. And although early,
13 we're beginning to see concrete results.

14 This year, our schools' pool received an
15 actuarial reduction of 22 percent from our actuary; 15 percent
16 of that 22 was directly attributable to the reform. And I have
17 to say that for your purposes, in terms of understanding the
18 contrast, between 2000 and 2001, and 2001 and 2002, we had
19 received an increase from our actuary of 37 percent. And so,
20 that's in sharp contrast to what we have just received as a
21 result of post reform efforts.

22 These actuarial reports are critical for us as a
23 public entity serving schools because it's the first documents
24 that our financial auditors ask for as they walk in the door on
25 an annual basis to review our books. It's critical, and they're
26 considered a bell weather for us moving forward in terms of rate
27 development for our schools.

28 The second major area of improvement that have

1 been seen in the workers' comp has been in the excess market of
2 California. Two years ago, only one to two excess carriers
3 would provide a quote on our program. And in contrast, today
4 there are more excess carriers in the marketplace that are
5 interested in our coverage at more favorable rates due to
6 competition. More market forces writing coverage in California
7 results in a stronger fiscal backbone for the future, and I
8 believe that's because post reform, there's greater
9 predictability in terms of costs, and there's standardization in
10 terms of medical care.

11 Very pragmatically, my examiners, my staff tell
12 me that they're seeing a continued decline in litigated claims,
13 files are closing sooner, and medical treatment is being
14 provided to injured workers in an expedited manner. We're
15 seeing greater success in our return-to-work programs, and our
16 utilization review, which has incorporated evidence-based
17 medicine, has been showing signs of promise, and most notably in
18 excessive over treatment by chiropractors.

19 I'd like to say that as a supporter of Andrea's
20 confirmation as Administrative Director, I believe in the
21 importance of continuity in the leadership, and I recognize that
22 our reform efforts are still under construction and much work is
23 remaining. Any changes at this time would be perhaps a step
24 backwards and could possibly cause erosion in some of the
25 achievements to date.

26 Ms. Hoch was charged with the task of writing the
27 regulations to implement the Legislature's intent, and to the
28 best of my knowledge and experience, she's done so. Throughout

1 the course of her service as the AD, she has performed her
2 duties with competence and fairness. She's made every effort to
3 involve various stakeholders throughout the process, and has
4 done an admirable job under pressure and tight deadlines.
5 Frankly, Andrea has shown great courage in tackling the tangled
6 web of workers' compensation, and I strongly support her in
7 terms of confirmation for Administrative Director.

8 I'm reminded of the adage that nothing's
9 impossible for the person who doesn't have to do it. And I'm
10 just here to tell you that I'm very impressed with the deadlines
11 that have been met and the deliverables to date. And we're very
12 thankful for her effort on behalf of our school districts.

13 In conclusion, I would like to thank the Members
14 of the Committee for the opportunity to speak today, but more
15 importantly for your time in learning how school districts are
16 impacted by uncontrolled workers' compensation costs.

17 My hope is that we can continue to strike a
18 reasonable balance between the needs of injured workers and
19 their employers, including school districts, while at the same
20 time promoting accountability throughout the workers'
21 compensation system.

22 The time is now to help protect school dollars,
23 and I want to encourage you to vote for Andrea's confirmation.
24 Thank you.

25 CHAIRMAN PERATA: Thank you.

26 Next.

27 MS. AXTELL: My name is Nancy Axtell. I'm
28 Chairman of the Legislative Committee for California Coalition

1 on Workers' Compensation. That's an organization comprised of
2 over 300 private and public employers in California.

3 I'm also the Director of Safety and Risk
4 Management for PRIDE Industries, which is headquartered in
5 Roseville, California.

6 On behalf of both organizations I'm here today to
7 testify in support of Andrea Hoch as Administrative Director for
8 the Division of Workers' Compensation.

9 Some of you may already know, PRIDE is a
10 nonprofit company, employing approximately 3,000 people nation-
11 wide. It's one of the very few companies in the nation whose
12 mission is to provide employment opportunities for people with
13 disabilities. Currently of the 3,000 employees, approximately
14 70 percent of them are classified as a person with a disability.
15 Types of disabilities include autism, Downs syndrome, mental
16 retardation, hearing impaired, physical deformity, and
17 individuals who are recovering from drug and alcohol abuse.
18 Through their employment with PRIDE, many of these individuals
19 are able to get off the welfare rolls and other government
20 supported social services programs.

21 Over the last few years, PRIDE, like many other
22 California businesses, has struggled to pay the high cost of
23 workers' compensation insurance. Even with an experience
24 modification rate in the 70 percentile range, PRIDE's work comp
25 costs continued to increase each year, making it tougher for us
26 to grow and provide additional opportunities for those with
27 disabilities.

28 As costs rose for PRIDE and other California

1 employers, many workers continued to complain that they were not
2 fairly compensated for their injuries. It was very apparent
3 something needed to be done. The system was badly broken, and
4 it was in desperate need of repair.

5 Thanks to the California Legislature and
6 Governor, something was done. They enacted AB 227, SB 228, and
7 SB 899. This was a huge step in putting something in place that
8 would give relief to California employers, while at the same
9 time increase benefits to injured workers that were most
10 deserving. This brought California more in line with similar
11 work comp regulations that are found in many other states.

12 However, the work was not done with the signing
13 into law these reforms. Instead, it had just begun. The next
14 step was to find someone to review the laws and write
15 regulations. Last year, Andrea Hoch was appointed to do just
16 that. In a relatively short amount of time, Andrea successfully
17 completed this task.

18 Unfortunately, as is true with any new laws, the
19 regulations enacted were not popular with everyone. This is to
20 be expected, as we all know a change of any kind, whether it be
21 good or bad, creates confusion. And until people fully
22 understand the reasons for the changes, they are reluctant to
23 accept them.

24 However, the regulations promulgated by Ms. Hoch
25 currently reflect the language of the law, and really will
26 eventually benefit the majority of California employees and
27 employers. Because the reforms are in their infant stage, it's
28 too soon to know the total effect they will have on the overall

1 work comp system. However, preliminary results for PRIDE
2 include better quality of care for injured workers. Utilization
3 review has put a stop to the abuse by medical providers and
4 brought about appropriate medical care in a timelier manner.

5 No longer are we being faced with \$35,000
6 chiropractor bills for treatments that never seem to improve the
7 health of the injured, and oftentimes are based merely on
8 subjective findings. Utilization review has brought workers'
9 compensation treatment and care more in line with the type of
10 care provided by private and group health insurance plans.

11 Another benefit to workers is that they are no
12 longer denied treatment in circumstances where acceptance of a
13 claim must be delayed. The medical provider networks provide a
14 good panel of physicians which injured workers may choose for
15 treatment. Similar to private and group health insurance plans,
16 injured employees are no longer left searching for a doctor if
17 they are unhappy with the quality of care they receive. Because
18 of utilization review and the MPN, doctors may now be held
19 accountable for the treatment plans they provide to injured
20 workers.

21 Also, total temporary disability benefits have
22 increased due the reform. Furthermore, permanent disability
23 awards which follow the AMA guidelines makes sense. After all,
24 41 other states live by the AMA guidelines, so it sounds
25 reasonable that California should follow suit.

26 Even in the infant stages of the new reforms,
27 much has been gained by both injured workers and employers. We
28 are beginning to see decreasing costs for employers, while at

1 the same time, better quality of care and consistency in
2 benefits for injured workers.

3 In order to keep the momentum going, Andrea needs
4 to be confirmed as Administrative Director so she may continue
5 moving the reforms in the right direction. It's obvious the
6 system is on the mend, and removing Andrea at this time would
7 cause the progress we've made to suddenly be stalled, or worse
8 yet, go backwards. Consistency in the system has been needed
9 for sometime, and now we're starting to have it. As you know,
10 the work comp system is very confusing to both employers and
11 employees. A nonconfirmation of Andrea would not only present
12 another confusing scenario, it would delay the reforms. Another
13 change would provide additional confusion to all affected
14 parties and is not what we need at this time.

15 The decision is yours. A vote for Andrea is a
16 vote for endorsement of the reforms dictated in AB 227, SB 228,
17 and SB 899.

18 As a representative of PRIDE Industries and as
19 Chairman of the Legislative Committee for California Coalition
20 on Workers' Compensation, I ask you to please make the decision
21 to confirm Andrea Hoch and allow the reforms to continue so that
22 California's work comp system will be fixed and better meet the
23 needs of all beneficiaries.

24 Thank you.

25 CHAIRMAN PERATA: Thank you.

26 Next speaker.

27 MS. GUYAN: Good afternoon, distinguished Members
28 of the Senate Rules Committee. I am Suzanne Guyan, Director of

1 Employee Benefits for Costco Wholesale. I'm also Chair of the
2 California Coalition of Workers' Compensation, whose membership
3 does include large, small, public and private employers.

4 I am here today on behalf of both organizations
5 and the California Grocers' Association to speak in support of
6 confirming Andrea Hoch as Administrative Director of the
7 Division of Workers' Compensation.

8 I will not repeat some of the previous testimony
9 as far as the reforms that were needed and the regulations that
10 were needed.

11 I will remark about Ms. Hoch's extensive career
12 as an accomplished civil servant, and that as Governor
13 Schwarzenegger appointed Ms. Hoch, she introduced herself to the
14 community. She did not introduce herself as someone that was
15 going to change the world. She introduced herself as someone
16 that described herself as goal-oriented, and meeting deadlines,
17 and being effective, and being organized and fair.

18 I was impressed with her then, and I continue to
19 be impressed with her now, particularly with her deliberate
20 approach to her duties and responsibilities. As Administrative
21 Director, her first priority is to promulgate every necessary
22 regulation in a fair, timely, and satisfactory manner in
23 accordance with SB 899 and the other reforms.

24 Ms. Hoch referred to the advisory committees. I
25 did participate in most if not all of those advisory committees.
26 They were open dialogue. There was an opportunity for all
27 parties to express themselves and to share ideas and their
28 issues and concerns.

1 One of the areas where employers advocated that
2 we would like a regulation where there would be a limitation on
3 the number of times an injured worker could change treating
4 physicians. Ms. Hoch maintained the law was clear, and no
5 regulation was required to limit or extend an injured worker's
6 right to change physicians.

7 As a workers' advocate, Ms. Hoch recognized the
8 need to communicate the legislative changes and its effect to
9 injured workers. Andrea referred to the Information and
10 Assistance Office and employee workshops. Those are really
11 vital to help educate and inform injured workers.

12 Leadership of the Division of Workers' Comp
13 requires more than technical ability. The position requires
14 commitment, hard work, determination, and the discerning ability
15 to be fair and balanced. Ms. Hoch represents all of those
16 qualities.

17 A few years ago, California was at the bottom of
18 the barrel in terms of workers' compensation systems. The
19 system is now on the mend, providing increased benefits to
20 injured workers and medical care. By voting in favor of
21 confirming Andrea Hoch, you are continuing those efforts with a
22 proven, capable and effective candidate. Today your vote will
23 seal California as a leader in workers' compensation reform,
24 characterized by the implementation of meaningful regulations
25 and a watchful eye on responsible parties adhering to these
26 regulations.

27 Thank you.

28 CHAIRMAN PERATA: Thank you.

1 Next.

2 MS. AGUILAR: My name is Cathy Aguilar, and I'm
3 here to represent San Diego County and Imperial County Schools
4 Joint Powers Authority. That consists of over 48 school
5 districts and represents over 40,000 employees.

6 I, too, only echo all that has been said on the
7 amazing job that Ms. Hoch has done. We'd like to encourage you
8 to please confirm her nomination.

9 Thank you.

10 CHAIRMAN PERATA: Thank you.

11 Next speaker.

12 MS. SMITH: Hi, my name is Shannon Smith, and I'm
13 just a small business owner from the Valley. Thank you for
14 letting me come up here and testify today.

15 I support her confirmation, and the reason why is
16 in 1993, I started a small business with my sister-in-law, and
17 we grew, and grew, and grew. And we provided great customer
18 service that gave us the opportunity to grow into a larger --
19 we had eight offices.

20 In 2002, my premiums doubled at no -- it was not
21 my fault that they doubled. It wasn't because of anything that
22 we had done. We have a great safety program; we gave a great
23 risk management division. We provide benefits to our employees.
24 There wasn't any reason other than the cost of insurance going
25 up.

26 What my company suffered was medical benefits.
27 Instead of the company paying the contributory factor to the
28 benefit cost of 75 percent, we had to reduce it to 50 percent,

1 and the employees had to pick up an additional medical cost. We
2 put a cap on all raises from senior management, including myself
3 and my partner, we took pay cuts, and all senior management did.
4 We closed down our Merced, our Fresno, and our Humford office,
5 which laid off the entire staff that we had there, and excluded
6 people from jobs in that area that we serviced.

7 I'm an insured employer. I'm not self-insured.
8 I do have a carrier.

9 We are barely just now seeing the results of some
10 of the things that Ms. Hoch has put into place with the passage
11 of SB 899. And I would hate for instability to come within the
12 market without her confirmation, because I think that would just
13 give the insurance companies another reason not to reduce rates
14 in the future. And we're not picking on them. I'm just trying
15 to create stability where stability needs to be done.

16 I think that the leadership that she's shown, as
17 an employer, when you talk to other employers in the Valley
18 where I'm from, when it was passed, I never in a million years
19 thought she'd be able to accomplish what she did, and I'm very,
20 very grateful that she has. And I'm just amazed at her ability
21 to be able to stay on track and meet those deadlines that were
22 created by the Legislature.

23 And thank you.

24 CHAIRMAN PERATA: Thank you.

25 Next Speaker.

26 MR. JONES: My name is Rick Jones. I'm owner of
27 a company called KBA Engineering. We're a manufacturing service
28 company in Kern County. We work in the oil, geothermal, and

1 wind industries. We employ about 90 people, highly skilled
2 machinists and mechanics, and general field labor.

3 We were fortunate enough to work in an industry
4 that has really extremely good safety programs and are very cost
5 conscious. They picked their vendors through product pricing,
6 obviously, good safety programs and our experience margin.

7 The rise in compensation in the last few years
8 has kept us from growing. It has kept us from investing dollars
9 in new equipment and more people. We've had to give way to some
10 of our competition just because we didn't have the dollars to
11 grow. And a big share of that's been going into comp premiums.

12 I handed out an example of what our premiums have
13 done over the last few years. Thank goodness we've been able to
14 get some competitive bids for the first time in four years this
15 Year due to the reform. It looks like we peaked, hopefully.

16 I want to see this good work continue. Our comp
17 rates had gone up three-fold in that period of time. And we
18 have a .65 experience margin; no reason for that to happen.

19 I'm asking you to please confirm Ms. Hoch. We
20 need her leadership. We need this reform to continue. We need
21 to let it mature and let it takes its time. I encourage you to
22 vote for her, please.

23 Thank you.

24 CHAIRMAN PERATA: Thank you.

25 Next speaker.

26 MR. ESPARZA: My name is Luis M. Esparza. I
27 represent Fox Enterprizes. And I'm also a former handicapped,
28 so I've been on both sides of the fence. I'm an owner, I'm also

1 a former injured worker.

2 So, I want to explain to you how the workers'
3 comp hurt my business. In 2003, my premium a month was \$360,00
4 a month. And then in 2004, it went from 360,000 to 940,000 a
5 month. So, at that point I was almost blamed for buying
6 improperly. I became a self-insurer.

7 But I believe the reforms that have been put in
8 place are going to be a great benefit for both workers and
9 employers. As I was saying, I've been on both sides of the
10 fence.

11 And also I believe the commitment from Ms. Andrea
12 Hoch will be a great beneficial to us, and I ask you to appoint
13 her.

14 Thank you.

15 CHAIRMAN PERATA: Thank you.

16 Next speaker, please.

17 MR. BACCHI: Thank you, Mr. Chair. Charles
18 Bacchi with the California Chamber of Commerce here in support
19 of Andrea Hoch as the Administrative Director.

20 I'll truncate my comments for the Committee
21 because many of the issues have been covered.

22 I did, however, hand out to everyone on the
23 Committee this document. You should have it in front of you.
24 It's a CWCI Bulletin. And I just think as we talk about the
25 challenges that the reform bills have presented to the Division
26 of Workers' Compensation and Andrea Hoch, that as you look at
27 this listing of all of the regulatory actions that she's either
28 started, finished, or is engaged in currently, it really is an

1 impressive list.

2 Some of these are obviously requirements for new
3 regulations that were enacted as part of SB 228 and AB 227,
4 bills that were passed in 2003. Prior to Andrea Hoch taking
5 over the Division of Workers' Compensation, there was no
6 advancement of those regulations.

7 So, this list of work that you see is quite
8 impressive. Flip it over to the back side, you've got some more
9 listed. I think it shows -- it's a very good visual for exactly
10 how much she's accomplished. I think it's a great testament to
11 her abilities, the abilities of the improved and re-invigorated
12 Division of Workers' Compensation, something that's incredibly
13 important to California's employers.

14 As important as these regulations are to ensuring
15 that the reforms move forward, it's important to note, Ms. Hoch
16 has already mentioned it, all the work that she's doing to try
17 and restructure the Division and make it work better, to improve
18 it. And it's important not to forget that the front line for
19 injured workers, employers, and everyone in the system are the
20 district offices where the judges are located, where the actual
21 cases are being heard. And Andrea understands that. She's, I
22 think, really committed to trying to improve the operation of
23 those offices, and it's going to present great benefits for
24 injured workers, for everyone involved in the system.
25 Hopefully, it'll offer a reduction of the backlog of cases, so
26 we can get cases resolved faster for injured workers and for
27 employers.

28 So in conclusion, we're obviously here and asking

1 for you to support her confirmation. We think she's done a
2 great job. She's been an exceptional candidate through an
3 extremely tough time. We'd ask for your Aye vote.

4 Thank you.

5 CHAIRMAN PERATA: Thank you.

6 MR. RAKICH: Thank you, Mr. Chairman, Members.
7 Mark Rakich on behalf of the California Association of Joint
8 Powers Authorities.

9 I'm not going to detail some of the important
10 local government issues. Mr. Brady spoke about them. You've
11 heard from school organizations, also includes park districts.
12 So, when you hear about, you know, textbooks and other issues
13 that the reforms have enabled the school districts to afford
14 now, think also about fire engines, and park equipment, and all
15 the other local government services that workers' compensation
16 has historically been siphoning funds away from.

17 I want to take a moment and remind, I've known a
18 number of you for a number of years, but I think I pre-date most
19 of the Senators in my earlier life at the Department of
20 Insurance. And I think I have somewhat of a unique perspective
21 on legislative expectations and the realities of state
22 government agencies.

23 I just need to say that when 899 was enacted, I
24 looked at it and I thought, there's not a snowball's chance in
25 hell that we're going to get these things done on deadline. And
26 then I looked at the process that Andrea put forth, and it was
27 very inclusive. It included lots of working groups, an intense
28 amount of time. And I thought, this is just not going to

1 happen. And yet, as you heard from Charles, it did happen, on
2 time. Every single reg that you guys asked to be put in place
3 in a very short timeframe happened on time.

4 Ms. Hoch is seriously competent. It would be a
5 travesty if she's not confirmed by this Committee, and we'd urge
6 your support.

7 Thank you.

8 CHAIRMAN PERATA: Thank you.

9 Next.

10 MR. WASHINGTON: Good afternoon, Mr. Chairman and
11 Members. Willie Washington with the California Manufacturers
12 and Technology Association.

13 We are also in support of the confirmation of Ms.
14 Hoch. Much of the items have been covered, and I'll try to be
15 brief.

16 Like the previous speaker, I operated and worked
17 in California under six Administrative Directors prior to her
18 appointment. And I have to commend her that of all those
19 administrators with whom I've worked in the past, none have been
20 as effective as she in implementing legislation that the
21 Legislature has passed.

22 One of the things that we're beginning to see now
23 is the benefits of legislation that was passed early on, and
24 because it was never implemented, there was never any benefits
25 accruing to either the employers or -- the benefits were
26 mandated to go in on a date certain so that the benefit accrued
27 to the injured worker, but none of the other changes
28 materialized because nothing was being done.

1 I'm very pleased to say that Ms. Hoch has been
2 responsible for those. And in fact, we're beginning to see the
3 benefit of those as we speak. This week, on Monday, I was in
4 San Francisco, and I attended a hearing with the Insurance
5 Commissioner who was hearing the rate recommendations from the
6 WCIRB. And one of the things that the Workers' Compensation
7 Insurance Rating Bureau had recommended early on was a 10.4
8 percent rate reduction in pure premium. Now, that's a double
9 figure, and we were pleased to see that number. Many people
10 thought that the number ought to be greater.

11 Well, I sat through the hearing, and I heard the
12 presentation that was made by the rating bureau. And some of
13 the numbers that they came up with were rather revealing. And
14 one of them is the fact that in California right now, the cost
15 of processing claims on the part of insurers is down to about 45
16 percent.

17 Now, what that means to you in layman terms is
18 that for the amount of money that you would normally set aside
19 to do a claim, if it was a dollar that you had set aside as the
20 regular amount, it now costs about 45 cents to do that.

21 So, and listening to the Insurance Commissioner,
22 and also in testifying on that issue and all, we believe that
23 you're going to see additional rate decreases. The rate that's
24 being considered now is for July 1 of 2005. The Commissioner
25 will convene another hearing on the 19th of May, at which time
26 he will take additional information that he's waiting on to be
27 developed, and he will weigh that. And at that time it is
28 widely expected that the Insurance Commissioner is going to

1 recommend a great reduction in that 10.4.

2 I think that most of this could be attributed to
3 the fact that you have an Administrative Director who has been
4 diligent, and has done all of the things that were there to be
5 done. She picked up all of those things that were left hanging
6 out there that she inherited. She walked into SB 899, but I'm
7 not so sure that she knew that she was going to be inheriting
8 227, 228, 749, all of those bills that preceded her
9 appointment.

10 I'm a big fan. She's certainly convinced me, and
11 I urge you to confirm Ms. Hoch as the Administrative Director of
12 DWC.

13 CHAIRMAN PERATA: Thank you.

14 Next, please.

15 MR. PUGLIA: Mr. Chairman, Dave Puglia from
16 Western Growers Association. I'll keep my comments brief.
17 You've heard many of the facts that we would echo.

18 We're starting to see a return of stability to
19 the system. Many of our members are now starting to see premium
20 rates fall for the first time in over a decade.

21 We think it's critical that Ms. Hoch be
22 confirmed, and that her professionalism and dedication has led
23 to that return of stability to the system.

24 I would just close by echoing the comments of the
25 San Jose Mercury News, which wrote in an editorial in February
26 that practically every employer in the state owes her a debt of
27 gratitude. So do many California workers who wouldn't have jobs
28 if she weren't so effective as Director of the Division.

1 We certainly believe that that is the case, and
2 we would urge your support of her confirmation. Thank you.

3 CHAIRMAN PERATA: Thank you.

4 MS. LEE: Thank you, Mr. Chair and Members.
5 Kerry Lee on behalf of the California Restaurant Association,
6 supporting Ms. Hoch's confirmation.

7 We believe that to continue to move forward with
8 reform is crucial for the more than 81,000 restaurants in the
9 state and their employees.

10 Thank you.

11 CHAIRMAN PERATA: Thank you.

12 MS. DUNCAN: Denise Duncan, representing the
13 Lumber Association of California and Nevada, and the California
14 Independent Oil Marketers Association.

15 Our members' workers' comp rates are sky high,
16 and we really believe that Ms. Hoch's appointment -- that she
17 will be a leader in the reform of the workers' comp system. That
18 is greatly needed.

19 Thank you.

20 CHAIRMAN PERATA: Thank you.

21 Any further? Seeing none, we cleared the clock
22 and we'll go to those here in opposition. You also will have
23 one hour.

24 MR. SCHWARTZ: My name is David Schwartz. I'm
25 President of California Applicants Attorneys Association.

26 I want to say at the outset that we certainly
27 respect the public service of Andrea Hoch. Unfortunately, the
28 Schwarzenegger administration has made an unprecedented assault

1 on the rights of injured workers.

2 And I have to say that I listened to Senator
3 Poochigian, and I never heard Senator Poochigian say during all
4 the testimony on SB 899 that it was his intention to cut
5 permanent disability benefits for injured workers, for police,
6 fire, and other injured workers by 50 to 70 percent. I never
7 heard Senator Poochigian say it was his intention to reduce
8 benefits to 1972 levels. And I don't believe that any
9 Legislator would have voted for SB 899 if they knew that these
10 regulations were going to result in permanent disability levels
11 going being back to 1972 in most cases, and 1983 in other cases.

12 Labor Code Section 124 states that the Division
13 of Workers' Compensation is to protect the rights of injured
14 workers, and that is not what is happening. Every single
15 regulation that comes out is anti-worker, is interpreted in the
16 worst possible way for injured workers and to the best benefit
17 of employers.

18 There is not a single injured worker here today
19 testifying in favor of Andrea Hoch, and that's not a
20 coincidence. Injured workers do not receive welfare. They have
21 constitutional rights to adequate benefits that they gave up in
22 return for not suing employers. They have a constitutional
23 right to full medical treatment to cure or relieve them from the
24 effects of their injuries.

25 I want to talk just for a moment about the
26 permanent disability schedule that's been promulgated. On
27 November 15th, I was sitting in San Francisco as part of an
28 advisory group. And at that time we were handed the permanent

1 disability schedule that was going to result in the permanent
2 disability ratings and benefits on an emergency basis on
3 January 1st.

4 At that time, Administrative Director Hoch said
5 that she had made a policy decision to come up with this
6 schedule. In other words, she has made a policy decision to
7 reduce benefits 50 to 70 percent without any legal basis.

8 The future earning capacity modifier that she has
9 used for the impairment ratings of 1.1 to 1.4 is simply an
10 arbitrary decision on her part. She has stated in oversight
11 hearings that she has no data connecting AMA impairment ratings
12 to future earning capacity; that it would take 18 months to
13 three years to come up with this data. Nevertheless, she is
14 content to impose an arbitrary system reducing benefits,
15 slashing benefits for injured workers, keeping injured workers
16 from buying the basic necessities of life, paying for their
17 homes, their cars, supporting their families.

18 I don't know on what basis she's doing this. She
19 took schedule -- she took information based on the old schedule
20 and attempted to apply it to the new schedule without any
21 basis.

22 On December the 7th -- and by the way, on
23 November 15th she said, this is just the initial schedule. It
24 was a work in progress.

25 On December 7th, she was informed in the
26 legislative oversight hearings with the Senate that there was no
27 legislative intent to reduce benefits for injured workers with
28 impairments.

1 By the way, Greg Newhouser of UC Berkeley,
2 indicated that 20 to 30 percent of people, injured workers, who
3 had previously qualified for permanent disability under the old
4 schedule would not qualify under the new AMA's rating schedule
5 for impairments. That was the cost savings that the Legislators
6 were talking about, in addition to reducing permanent disability
7 benefits by one week.

8 She indicated at that time that she would take
9 into consideration the comments of the Legislators, and again
10 that it was a work in progress and she would make the necessary
11 modifications.

12 She was given an independent study by a UC
13 professor named Paul Lee, who indicated that there was a
14 three-to-one ratio, not a .1 to .4 ratio in terms of impairments
15 versus disability. In other words, the disability ratings need
16 to be adjusted by 300 percent, not 10 to 40 percent.

17 She was given a study by the Commission on Health
18 Safety and Workers' Compensation which indicated that there was
19 at least a 50 percent reduction in permanent disability
20 benefits. She again said she would consider these studies, but
21 issued the same regulations on January 1st, 2005.

22 Again, she continued to say that she was going to
23 consider the evidence, the intent of the Legislature, the
24 studies that she had, and she did nothing.

25 And in the press, all we got from the
26 Schwarzenegger administration's spokesman was, "This isn't
27 final. This is a work in progress. We don't want to hurt
28 injured workers."

1 On April 4th, 2005, Senator Burton in a public
2 hearing on the permanent disability regulation told Andrea Hoch
3 that there was no intent to reduce benefits for injured workers,
4 other than what I have previously talked about, and told Andrea
5 Hoch that if he had known how unfair she would be in
6 promulgating these regulations, that he would have put her up
7 for confirmation and he would have rejected her confirmation
8 immediately.

9 Following that, there were three hours of
10 testimony from injured workers on how these AMA ratings would
11 affect them, and how there would be severe reductions in
12 benefits to levels not seen since 1972 and 1983.

13 And then, on April 21st, 2005, the two-time past
14 President of the Defense Attorneys Association wrote an open
15 letter to the workers' compensation insurance -- the workers'
16 compensation community, which I'm sure that Andrea Hoch has,
17 indicating that in his review of back injuries, there would be a
18 53 to 100 percent reduction in benefits, and urging employers to
19 assist in revising this schedule because it was ethically and
20 morally unfair.

21 I haven't heard a word out of anybody in this
22 administration refuting the studies of Paul Lee, refuting the
23 studies of the Commission on Health and Safety and Workers'
24 Compensation, or a word indicating that this permanent
25 disability is in any way fair to injured workers.

26 And we intend to fight this in the courts,
27 Mr. Chairman.

28 So, while I acknowledge some of the

1 accomplishments, technical accomplishments, the fact remains
2 that Andrea Hoch's regulations are unfair to injured workers.

3 And I'd like to present the testimony of one
4 injured worker. His name is Paul Claiborne, and he's going to
5 tell you how he was taken out of treatment with his own doctor
6 and put into MPN, a regulation passed by Andrea Hoch, and a
7 regulation that is not based on the statute.

8 Mr. Claiborne.

9 SENATOR BATTIN: Just so we're not interrupting
10 the injured worker, give us the date of your injury when you
11 testify. I would appreciate that very much.

12 MR. CLAIBORNE: My name is Paul Claiborne. I'm a
13 teacher in Auburn, California.

14 I believe the date of my injury was March 30th,
15 1999.

16 I would like to discuss the impact the new
17 workers' compensation law has had on my work-related injury.

18 My injury resulted in four back surgeries. I've
19 been diagnosed with failed back syndrome and severe chronic
20 intractable pain. A qualified medical examiner stated that I
21 was approaching 100 percent disability rating.

22 Prior to the passage of the new law, I remember
23 stated many times in the press and elsewhere that the new law
24 would not harm legitimately injured, seriously injured workers.
25 Unfortunately, the new law has seriously injured me.

26 As a result of the new law and its reliance on
27 the ACOEM guidelines, I have been denied my pain medication.
28 I've also been put on notice that I can no longer use the doctor

1 who's treated me since my injury occurred and who is a pain
2 management specialist. Instead, the insurance carrier has
3 demanded that I choose a doctor from their Medical Provider
4 Network in a specialty unrelated to pain management.

5 I was injured in the course of my teaching duties
6 when I was called upon to remove a violent student from a school
7 bus. The student had struck another student, was threatening
8 the bus driver and other students on the bus.

9 When I physically removed the student from the
10 bus, my foot got caught in a backpack that was on the floor, and
11 I fell and injured my back. I continued to work, however, and
12 sometime after that I again injured my back trying to open a
13 large sliding window in my classroom. The classroom had
14 settled, and the window was stuck. And when the window popped
15 loose, I rotated, and there was a loud pop. The students even
16 commented, "Was that your back, Mr. Claiborne?"

17 Subsequent medical evaluation revealed a severe
18 back injury, and showed that my spinal cord had been injured,
19 and the nerves going to my leg and other areas of my body had
20 been compromised.

21 I underwent a three-level fusion, which involved
22 two surgeries on alternate days. I was cut open from here to
23 here, with an alternate scar on the back from there to there. I
24 had screws placed in me this big, six screws like this, plus the
25 other hardware that was in there, rods. They eventually took
26 these out because they thought they were causing my problems.
27 Unfortunately it didn't help reduce my pain.

28 Like I said, as a result of the surgery, I've

1 been diagnosed with failed back syndrome and severe chronic
2 pain.

3 I have tried and failed with many kinds of pain
4 medication. Unfortunately, I'm very sensitive to pain
5 medications, and I have suffered severe side effects from almost
6 everything I've tried: headaches, vomiting, stomach problems.
7 I've been taken to the emergency room because of some of these
8 side effects.

9 Fortunately, I have a very good doctor who
10 encouraged me to stick it out and keep trying medications.
11 Eventually I found a medication that worked. Unfortunately,
12 when the new law took effect, I received a letter stating that
13 under the ACOEM guidelines, my medication would no longer be
14 authorized.

15 Interestingly, I believe some of the doctors who
16 have made decisions in my case were out-of-state doctors, and
17 when I checked the California Medical Board, they aren't even
18 licensed to practice, according to the web site, in California.
19 Have made recommendations as to my treatment. I don't
20 understand how a doctor who isn't licensed in California can
21 make recommendations on my treatment.

22 These out-of-state doctors have ignored my
23 doctors, other doctors who have looked at me. They've even
24 ignored the qualified medical examiner who stated that my pain
25 medication was appropriate.

26 I was given the opportunity to appeal their
27 decision denying my pain medication. My doctor wrote a lengthy
28 eight-page appeal and sent it in in February. There has been

1 no response.

2 Actually, there has been a response. I received
3 a letter stating that my doctor will no longer be allowed to
4 treat me, that I must select a physician out of one of their
5 primary physicians network, physicians medical network. And the
6 doctors I was provided with, the specialties are not in pain
7 management. They're in orthopedics. And it's a little bit like
8 sending somebody with a brain tumor to a dentist. An orthopedic
9 person isn't going to treat a chronic pain person.

10 For me, the workers' compensation law, the new
11 law, is just not working. And if you think it is, I really
12 believe you're sadly mistaken.

13 If you have any questions, I'd be happy to try to
14 answer them.

15 MR. SCHWARTZ: Thank you, Mr. Chairman.

16 CHAIRMAN PERATA: Thank you.

17 Yes, ma'am.

18 MS. WEI: Mr. Chair and Members, Angie Wei on
19 behalf of the California Labor Federation.

20 We are respectfully but strongly opposed to the
21 confirmation of Andrea Hoch this afternoon to be the
22 Administrative Director for the Division of Workers'
23 Compensation.

24 I'll provide a little bit of background. Over
25 the last four years, organized labor has been central to
26 bringing workers' comp reform in California. We recognize that
27 employers are paying skyrocketing rates. We had a difference of
28 opinion as to why. We think it was the de-regulation of the

1 insurance industry and skyrocketing medical costs that put us in
2 that situation, but we knew that employers were paying triple
3 times the rates that they were paying prior, and we wanted to be
4 part of the solution. We wanted to be part of a process to put
5 together a workers' comp system that worked.

6 That's why we supported AB 227 and SB 228 in
7 years prior, and that's why we went neutral on SB 899. We went
8 neutral on the workers' comp overhaul last year because we
9 thought that we had a deal. This Governor said he wanted less
10 litigation in the system; he wanted a more predictable system,
11 more access to medical care for truly injured workers. He said
12 he did not want to further injure the truly injured workers.

13 He said that we needed to reform the system but
14 not on the backs of the injured workers, and we believed this
15 administration when they made that promise.

16 This is not buyer's remorse today. We are not
17 opposing because we regret what happened.

18 We are opposing Ms. Hoch's confirmation because
19 the law has been violated. The deal has been broken, and we
20 have been, the injured workers, betrayed.

21 I've asked the sergeants to pass out two
22 documents right now. The first -- I'm going to try and very
23 quickly walk folks through the three places in which we point
24 out that the law has been violated.

25 First on permanent disability benefits, if you
26 look at the Labor Code 4660. Page 1, I tried to highlight, and
27 I'm sorry I didn't bring enough copies. But if you flip the
28 page to page 2, 4660 (b) (2) very clearly requires -- I'm going

1 to take a step back on permanent disability and say, we
2 recognized, everybody recognized when we put together the
3 permanent disability provisions that going to the American
4 Medical Association Guidelines was going to slash injured
5 workers' benefits, and nobody wanted to slash the benefits this
6 deeply. That's why you see adjusters in the statute for age,
7 for occupation, and for diminished further earnings capacity.

8 If you look at the statute here at 4660 (b)(2),
9 it says that the Administrative Director shall formulate the
10 adjusted ratings schedule based on empirical data, and it cites
11 a RAND December 2003 report.

12 Ms. Hoch before the Labor Committee, the Senate
13 Labor and Industrial Relations Committee in December said she
14 used RAND data to create a proportionality in putting together a
15 new permanent disability schedule, but she did not use it to
16 measure future earnings capacity and the diminishment, the loss
17 of wages for an injured worker in putting together the new
18 permanent disability rating.

19 She says herself she made it on a policy
20 decision. She made her own policy decision.

21 The statute doesn't allow her to make that policy
22 decision. The statute requires her to go back and incorporate
23 empirical data.

24 During that Senate Labor hearing, we learned that
25 the RAND corporation, which was supposed to help put together
26 this empirical data, was told not to, was stopped from doing so
27 because we had to meet a deadline, but we knew we would get it
28 wrong.

1 We weren't naive last year in SB 899. We knew
2 that there were going to be risks that injured workers would
3 suffer, and that's why, where we could, we tried to tab down the
4 statute as closely as we could. That's why you see in 4660
5 (b) (2) the reference to the empirical study.

6 We knew that RAND, the RAND Institute had
7 consistently published findings that said permanent disability
8 benefits in California for injured workers were already
9 inadequate. We were already inadequate under the old system, so
10 we felt comfortable tying it to empirical data that that
11 inadequacy would be reflected, and we would get a fair and
12 predictable system that would not hurt the truly injured
13 workers.

14 Beginning in November of 2004, organized labor
15 took the proposed regulations before they were promulgated and
16 started to crunch the numbers. And we put forward to the
17 administration data that showed 50 percent cuts for injured
18 workers across different injuries. To date, we have not
19 received any counter data from the administration; we have not
20 received any critique of the numbers we put forward, and now we
21 see real permanent disability ratings coming forward, and you'll
22 hear from such an injured worker in just a few moments.

23 The end result, what we see now, injured workers,
24 truly injured workers losing over half of their permanent
25 disability benefits. This was never supposed to happen. We
26 would never have been neutral on this deal, and we would
27 stipulate that this Legislature would never have overwhelmingly
28 passed legislation if they knew that truly injured workers would

1 to take a step back on permanent disability and say, we
2 recognized, everybody recognized when we put together the
3 permanent disability provisions that going to the American
4 Medical Association Guidelines was going to slash injured
5 workers' benefits, and nobody wanted to slash the benefits this
6 deeply. That's why you see adjusters in the statute for age,
7 for occupation, and for diminished further earnings capacity.

8 If you look at the statute here at 4660 (b)(2),
9 it says that the Administrative Director shall formulate the
10 adjusted ratings schedule based on empirical data, and it cites
11 a RAND December 2003 report.

12 Ms. Hoch before the Labor Committee, the Senate
13 Labor and Industrial Relations Committee in December said she
14 used RAND data to create a proportionality in putting together a
15 new permanent disability schedule, but she did not use it to
16 measure future earnings capacity and the diminishment, the loss
17 of wages for an injured worker in putting together the new
18 permanent disability rating.

19 She says herself she made it on a policy
20 decision. She made her own policy decision.

21 The statute doesn't allow her to make that policy
22 decision. The statute requires her to go back and incorporate
23 empirical data.

24 During that Senate Labor hearing, we learned that
25 the RAND corporation, which was supposed to help put together
26 this empirical data, was told not to, was stopped from doing so
27 because we had to meet a deadline, but we knew we would get it
28 wrong.

1 We weren't naive last year in SB 899. We knew
2 that there were going to be risks that injured workers would
3 suffer, and that's why, where we could, we tried to tab down the
4 statute as closely as we could. That's why you see in 4660
5 (b) (2) the reference to the empirical study.

6 We knew that RAND, the RAND Institute had
7 consistently published findings that said permanent disability
8 benefits in California for injured workers were already
9 inadequate. We were already inadequate under the old system, so
10 we felt comfortable tying it to empirical data that that
11 inadequacy would be reflected, and we would get a fair and
12 predictable system that would not hurt the truly injured
13 workers.

14 Beginning in November of 2004, organized labor
15 took the proposed regulations before they were promulgated and
16 started to crunch the numbers. And we put forward to the
17 administration data that showed 50 percent cuts for injured
18 workers across different injuries. To date, we have not
19 received any counter data from the administration; we have not
20 received any critique of the numbers we put forward, and now we
21 see real permanent disability ratings coming forward, and you'll
22 hear from such an injured worker in just a few moments.

23 The end result, what we see now, injured workers,
24 truly injured workers losing over half of their permanent
25 disability benefits. This was never supposed to happen. We
26 would never have been neutral on this deal, and we would
27 stipulate that this Legislature would never have overwhelmingly
28 passed legislation if they knew that truly injured workers would

1 get their benefits so slashed.

2 I want to put permanent disability into a greater
3 context. And that is, permanent disability represents 20
4 percent of the workers' comp system. It's not the majority of
5 the system; it's not the biggest cost driver in the system.
6 It's 20 percent.

7 But for the injured worker, it's everything.
8 It's the difference between being able to keep a roof over your
9 head or being homeless. And that's why we care so much about
10 permanent disability, the new ratings.

11 Then I ask you to turn to the second issue, and
12 that is Medical Treatment Utilization Schedule. If you turn the
13 page in the Labor Code, 5307.27 required the Administrative
14 Director to adopt Medical Treatment Guidelines by December 1,
15 2004 based on recommendations. And the language here is "shall
16 adopt" based on recommendations from the Commission on Health
17 and Safety and Workers' Compensation.

18 Currently no such regulations have been
19 promulgated. They have been circulated as draft regulations,
20 but they have not been officially promulgated. This deadline,
21 December 1, of '04 has been missed.

22 We want to point out here that the deadline here
23 has been missed -- let me take a step back.

24 Currently, injured workers, their medical
25 treatment is approved based on ACOEM guidelines. That's what
26 the default is today. We hear stories every single day of
27 injured workers unfairly and illegally getting their medical
28 treatment denied because insurance claims adjustors are saying,

1 "It's not in ACOEM; denied."

2 That's why we need new treatment guidelines
3 quickly so that we can set the rules out there for insurance
4 carriers so that illegal denial of care can no longer happen.

5 So, we have -- why this deadline was missed, yet
6 the permanent disability regulations deadline, where we all knew
7 that they weren't being promulgated correctly as to what the
8 statute required, why is there inconsistency in meeting these
9 deadlines?

10 That's one point on the medical treatment
11 guidelines. It's the timing of the issue.

12 The second issue here is that the statute
13 requires the Administrative Director's regulations to adopt the
14 Commission's recommendations. The Commission on Health and
15 Safety and Workers' Compensation recommends that the ACOEM
16 guidelines be adopted, along with the American Academy of
17 Orthopedic Surgeons guidelines, evidence-based, peer reviewed
18 guidelines for low back injuries. That's because low back
19 injuries are 35 percent of orthopedic claims in the workers'
20 comp system, and they really are a chunk, the guts of our
21 system.

22 A lot of folks in different industries suffer
23 from low back injuries. And if the right system is put back
24 into place, these workers can return to work and earn a living
25 to support their families.

26 The Administrative Director's draft regulations
27 for treatment guidelines ignores the Commission's
28 recommendations that the statute, we argue, requires her to

1 adopt, and does not adopt the AAOS guidelines.

2 The third and final point that I'd like to raise
3 about why we think the regulations and the law has not been
4 adhered to is something that we've most recently learned. And
5 that's the last page of what I've handed out. This is on the
6 return to work bump-up/bump-down.

7 In SB 899, we were trying to incentivize
8 employers to return injured workers back to work. We said that
9 for employees who get a bona fide return to work offer, they can
10 get their jobs back from their employers, they will get 15
11 percent less in PD benefits. For those employees who did not
12 get a return to work offer, they would get 15 percent more. We
13 were trying to create a financial incentive to return the
14 injured worker back to work.

15 The statute here, and if you look at -- oh, dear.
16 I think -- I'm sorry. It's 3(a). It's 4658.3 (b)(3). Thank
17 you, Ms. Hoch.

18 If you look (a) and (b), the (3)(a), what it says
19 here -- oh, I'm sorry, (3)(b) says that this paragraph, meaning
20 (a) and (b), the entire paragraph, shall not apply to an
21 employer that employs fewer than 50 employees.

22 Again, here we wanted to tab this down. We
23 wanted to say small employers with less than 50 employees have
24 more challenges in bringing workers back to work. Let's not
25 saddle them with this bump-up/bump-down. We are going to exempt
26 them altogether.

27 We have recently learned that the Administrative
28 Director's interpretation of this return to work bump-up/bump-

1 down allows for employers with less than 50 employees to bump
2 down the injured workers' permanent disability benefits should
3 they get a return to work offer.

4 The legislative intent was very clear here.
5 Employers with less than 50 completely exempted out of this
6 provision, and yet this interpretation has come from the
7 Administrative Director.

8 I'll point out in (3)(b) the last two sentences
9 use two different words. The word "subparagraph" and then the
10 word "paragraph". And "paragraph" includes (a) and (b)
11 exempting employers of less than 50 employees out of (a) and (b)
12 altogether.

13 These are three examples of why we think that
14 this deal has been broken, the statute has not been met, and
15 that the regulations promulgated in the proposed regulations are
16 in violation of the law.

17 I want to spend just one second talking about
18 what's happening today. That the Monday Insurance
19 Commissioner's hearing on rates, we know pure premium loss
20 ratios for the insurance companies have dropped, plummeted to 45
21 percent. That means that for every dollar of premium collected
22 by an insurance company, they're only paying out 45 cents in
23 benefits. They are making profits hand over fist.

24 Yet for the injured worker, not a single day goes
25 by that somebody on our staff, on our team, gets a call or an
26 email from an injured worker. Their benefits have been slashed;
27 their medical treatment has been denied; their lawyers are too
28 busy to call them; they're stuck in court; the insurance

1 companies aren't responding. Delay, delay, delay. These are
2 the consistent stories that we've been hearing.

3 And I thought I had brought, and I cannot find
4 it, somebody just mailed to me most recently a clip from the
5 Teamsters Local Union Newsletter of a suicide. A Teamster
6 member killed himself because he could no longer take the pain
7 from delayed and denied medical care by the insurance companies.

8 This is the third suicide of a union member that
9 we have heard of. It's painful to hear.

10 And their unions ask us, "How can you let this
11 happen? How did you let this happen?"

12 And we had to tell them, "We didn't let this
13 happen. We negotiated a deal that has now been violated."

14 Tomorrow is officially the National Workers'
15 Memorial Day, where we honor those workers who've been injured
16 and killed by their jobs. Usually we say, "Mourn for the dead
17 and fight for the living." Now in California we have to flip
18 that; we have to fight for the dead and mourn for the living.

19 We ask you to vote No today.

20 Oh, dear. I'm sorry. I'm going to introduce
21 now, if I may, Kristin Towers, who's an injured worker.

22 The second piece of paper you have is this; this
23 is a disability evaluation rating from the Governor's own
24 disability evaluation unit. And you'll see here that Kristin
25 would have been rated at 59 percent disabled under the old law,
26 and now is at 23 percent.

27 And I just want to say, I really appreciate her
28 taking the time to come here today.

1 MS. TOWERS: Hi. My name is Kristin Towers. I
2 was injured in April of 2002.

3 I'm a singer, dancer, actress. I'm a trained
4 actress. I went to school in New York City. My family are all
5 in the business. I'm a Screen Actors Guild member, so is the
6 Governor.

7 I was doing a show, and I weighed 105 pounds at
8 the time. I have since had a child, and I have one on the way,
9 so I do not weigh that any longer, but I did. And I signed a
10 contract to do a show.

11 And when I got there, they put me in a costume
12 that weighed 50 pounds, half my body weight. I was doing the
13 show for four months. It was a children's show. I was on a
14 national tour.

15 And while in one city, while on stage, my disk
16 fell out of my back. It was -- the costume had just grown too
17 much for my little body, and it pushed my disk out. The next
18 day I couldn't feel my legs, and the day after that I couldn't
19 feel parts of my back.

20 I had an entire career in front of me. I had
21 played Christine in "Phantom of the Opera" in Europe. I had
22 been in "Les Miserables" in Asia. I'm not somebody who did
23 community theater. I worked for a living, and I had a huge
24 career in front of me. I was 27 years old.

25 I came home from that tour. I was sent home.
26 They did MRIs, showed irreparable damage to my back. I started
27 going to therapy, which resulted in more pain. I continued
28 therapy, during which the insurance companies decided that I was

1 no longer useful to them in any way, and they cut off all of my
2 money.

3 I lost my home, my car, basically everything that
4 I had. And I continued to fight for my rights.

5 My grandmother, thank God, let me live with her
6 for awhile, so I am still here. But I have nothing.

7 My husband, who loved me even though I had
8 nothing financially to offer to the relationship, decided to
9 still marry me. That's why I eat everyday.

10 I had a child last year. Carrying a child with a
11 back injury, I'm sure you can imagine, was next to impossible.
12 And here I am, pregnant again. It's very difficult. I can
13 barely lift my child.

14 I'm going to have to have somebody come and help
15 me, and that's going to require money.

16 So, I went to see my doctor, and we decided that
17 it was time to either have surgery, which, as we all know, just
18 results in more surgery, and rarely, if ever, solves any back
19 problems. Or, just settle my case, live with pain for the rest
20 of my life.

21 So, I went to see mediating doctor who is between
22 my insurance company and my employer. And he rated my back
23 injury under the old system as a 59 percent disability, which
24 would have resulted in my final award being \$75,000.

25 Might I add that in my profession, I would have
26 made twice that amount in a year's time, and that would be for
27 the rest of my life. And I can never dance again. I can never
28 do what I did, and what I trained to do, and what my heart tells

1 me is my dream every day. I can never do it again.

2 And under the new system, I'm now 23 percent
3 disabled with the same exact injury, with the same exact
4 disabilities, with the lack of my life back. And that will
5 result in a final award of \$19,000 for the rest of my life.

6 I just ask you if that's fair? And I ask you to
7 use your better judgment.

8 And please understand that these people that are
9 coming forward, we're real. We're real people.

10 We just thank you for your time.

11 CHAIRMAN PERATA: Thank you.

12 We're going to take a ten-minute break.

13 [Thereupon a brief recess was taken.]

14 CHAIRMAN PERATA: We will reconvene.

15 MR. HAYES: Mr. Speaker, with your permission, if
16 I may, my name is Mark Hayes with Voters Injured at Work dot
17 Org.

18 In the interest of time, I would like to
19 introduce an injured worker, and then, if I may, defer to
20 Mr. Broad and let him go, and then I'll be able to come back.

21 CHAIRMAN PERATA: That's fine.

22 MR. HAYES: I introduce to you Mr. Pete
23 Balestrieri, who's an injured worker here in California.

24 MR. BALESTRIERI: How're you doing today? Thank
25 you for letting me speak.

26 CHAIRMAN PERATA: You're welcome.

27 MR. BALESTRIERI: I just want to get across to
28 the board here what is happening not only to myself but others

1 that I've met, but mainly myself and my family.

2 This has basically gone backwards for me
3 throughout the last three-and-a-half years. I'm an injured
4 worker of twelve. I'm reflecting off of three-and-a-half years
5 ago, my back injury, which has gone to my cervical, my lumbar,
6 and also in between, my thoracic, things that will never be
7 taken care of. And also justified by doctors that they feel to
8 let go right now because of my health issues I'm dealing with
9 now.

10 The main effect, I'm tired of getting stretched
11 out. I've been hearing people talk about the benefits changing,
12 and also releasing of getting proper therapy. Tools to take
13 care of issues of surgery and therapy that aren't being taken
14 care of.

15 I just had knee surgery. For God's sake, I don't
16 even have a brace. I have no therapy. I lost my therapy since
17 October for my body.

18 I'm 38 years old. I was reinjured at 34. I feel
19 like I'm 85-plus everyday, and growing older everyday. I cannot
20 do anything that I was to do before, especially with my children
21 and my family. I come from a family of eight children, with two
22 wonderful parents that taught us right.

23 And this isn't right what's going on. We work
24 together. We work hard. We take care of each other.

25 I'm embarrassed every day of my life. And I'm
26 embarrassed to the workers that I used to manage because they're
27 seeing what's happening.

28 My children ask questions daily, "When is this

1 going to be taken care of, Dad?"

2 I don't have answers.

3 I have my wife working 70 hours a week, 7 days
4 week, to supplement \$80-70,000 of my lost income over the last
5 three-and-a-half years. That's per year I've lost close to
6 \$200-300,000. That's not right.

7 I believe in the system the way it was originally
8 placed for the people and the care that is needed when it's
9 needed, and it should always be continued to be needed when the
10 doctor, I feel, makes the right decisions.

11 I've been at doctors that don't touch you, don't
12 analyze anything. This is coming from this system. It is wrong,
13 and you're losing people, not only physically, but I've met
14 thousands of people within the last four or five weeks, just
15 meeting injured workers, also breaking down mentally, losing
16 families, losing houses. I'm on that line now.

17 And I've worked almost 20 years for Reddimix, a
18 building material company. I'm like a convict to them now. I'm
19 like a convict to these insurance companies. I'm tired of it.

20 I believe that we have the right here to get what
21 is deserved, and that is our proper disability, our proper
22 needs, therapy.

23 I'm not sure if all of you have ever been hurt or
24 family members, but it's very traumatizing when you get an
25 injury on an injury, and you don't get the proper care and
26 therapy.

27 I'm losing over half of my awards from the first
28 judgment in the ratings. Now it's been cut down to 30 percent.

1 I'm making \$200-300,000 of loss in three years. I'm going to be
2 paid, hopefully, 20,000 measly dollars.

3 All's I ask is that you consider the right way
4 this should be handled, because there's thousands of people. I
5 want to make sure you guys know that.

6 But my issue, I'm getting older everyday, and I'm
7 deteriorating. I have many issues, from numb arms every night,
8 sleep maybe two hours a day.

9 But I have my job to take care of at my house,
10 and I'm worried about photographers and things. I have kids. I
11 have laundry. I have everything to do for my family.

12 And I just want to get that across to you folks,
13 that what is going on is not being handled properly. I don't
14 see it changing. I haven't seen it change. It's gotten worse
15 within the last two-and-a-half years of my surgery.

16 And I just want to thank you for your time.
17 Please consider listening to the other injured workers and what
18 we've all been here for, to hopefully protect ourselves.

19 Because my biggest concern and my wife's, she
20 can't continue to carry me. And I hope you can really put that
21 to heart, because I will lose everything. Because her industry
22 is strong right now, luckily, for the last two years, and it may
23 not for always, we will be on the street if this happens.

24 And I can't go ahead back to my parents and
25 friends. That's not their job. That is this administration's
26 job, to make sure that this is properly handled.

27 That's all I'm asking, and I thank you for your
28 time.

1 CHAIRMAN PERATA: Thank you for being here.

2 MR. BROAD: Mr. Chairman and Members, Barry Broad
3 on behalf of the Teamsters and other unions. But I want to
4 focus on my representation of the Teamsters.

5 I can tell you in the 20 years that I've been
6 doing this lobbying, I can count the number of times I've been
7 up here to oppose someone's confirmation on one hand.

8 Governors are entitled to their appointees. And
9 therefore, it's an extraordinary situation that would bring me
10 to oppose this appointee.

11 We sat down and negotiated in good faith with
12 this administration. My union, the Teamsters, felt that the
13 negotiations were fair and that very important rights for
14 injured workers were being preserved.

15 I heard this Governor say, I was in the room when
16 he said, that injured workers would not be harmed. Injured
17 workers would not be harmed.

18 And if there's anything unions know about, it's
19 sitting down and making a deal. And when you make a deal, you
20 live with the deal.

21 And so, this union, the Teamsters, was one of the
22 few unions -- I don't know if there was any other, maybe one
23 other -- that actually supported SB 899, because we felt that
24 the negotiation was fair. It may have not been the perfect
25 bill, but that a deal would be a deal, and that injured workers
26 would not suffer. The real people you see here today would not
27 suffer.

28 And frankly, what was written on SB 899, what was

1 agreed to buy this administration, was ripped up in the process
2 of implementing the law.

3 The first day I got on this job, my old boss took
4 me on a tour of the Capitol, and he told me two things. He
5 showed me all the pictures of the governors to explain about the
6 fleeting nature of celebrity and importance. And that what's
7 right and what is important is what transcends time, not the
8 individual person. And maybe this Governor is learning now
9 about the fleeting nature of celebrity and what's right and
10 what's wrong.

11 And he also said that whatever you pass in
12 legislation can be stolen from you in regulation. And frankly,
13 that's what's occurred here.

14 Now, I don't doubt that Ms. Hoch is a capable,
15 intelligent, thoughtful person. I believe that she is. And I
16 believe that she is faithfully doing what her boss wants her to
17 do, and what he wants her to do is wrong, dead wrong.

18 And I will never, ever, make the mistake again of
19 trusting this administration. That's a fact.

20 And I couldn't say that about George Deukmejian
21 or Pete Wilson. I couldn't even say it about Gray Davis. But I
22 can say that now.

23 I would urge you to vote No. Thank you.

24 CHAIRMAN PERATA: Thank you.

25 MR. HAYES: Thank you.

26 My name is Mark Hayes. And as I said before, I'm
27 the President Voters Injured at Work dot Org. We're a new
28 political organization.

1 For those of you who may not have heard of us,
2 we've only been around just over 90 days. Ninety days ago we
3 started with seven members. We're now up to 1500 members, and
4 we are growing day -- as the days go by.

5 The reason that we're here, I'd like to
6 acknowledge my fellow Board of Directors and electric cart over
7 here on the left, on the wall, Mr. Jessie Cineceros. Jessie is
8 pending both hip replacements.

9 I have another member over here, Scott Hayes, who
10 will be testifying momentarily.

11 We are here because of all the injured workers.
12 When I first heard the people speak at the beginning of this
13 hearing, I couldn't believe some of the things that I'm hearing.
14 Obviously, none of these people in big business have had to
15 experience the workers' compensation system.

16 For 90 days now, my phone rings off the hook, and
17 that's cell phone. My number's all over the State of
18 California. And all I'm getting is these people calling me up
19 because of denial, denial, denial. Everybody is denying care.

20 Now, all these people spoke earlier about how
21 they're getting better benefits, and what I am seeing is that
22 they are getting no benefits.

23 The denial of care, that we have people who have
24 valid court orders. They have their awards. It's past their
25 appeal times, and it's not doing them any good because the
26 insurance companies are ignoring them.

27 So again, they're hung up. They're saying, "What
28 do I do? I have a valid judge's order. Where do I go? What do

1 I do?"

2 It's denial, denial, denial.

3 Another major problem that we're having is,
4 people are calling me whose cases started back in the '80s and
5 the '90s. And those people are saying the same thing to me.
6 They're saying, "I used to have this treatment," or "I used to
7 have this medication. And now, all of a sudden, it's been
8 denied out clear blue sky."

9 And one of the benefits that they took years ago
10 was future medical for that very reason. Now, even though they
11 have that order with future medical in it, it's being ignored.
12 These people are not getting their medications. They're not
13 getting their treatments.

14 So, I'm seeing the opposite. I am seeing the
15 poor people that are out there, and the truly injured worker,
16 that are being totally ignored and the denial of care.

17 The reasons that the Workers' Comp Appeals Board
18 are getting so backed up is because of all the hearings, and the
19 hearings are from denials of care. When someone who had a
20 future medical years ago, that benefit, it's being denied now.
21 Their only remedy is to go back to court.

22 And most of those people don't have attorneys and
23 can't get attorneys, so they're stuck with having to file
24 appeals on their own. And I'm sure that everyone in this room,
25 if you're not an attorney, would not want to have to do that on
26 your own. Well, these are injured workers that are getting
27 older that have to do that.

28 So, I'm hoping that the right way -- the

1 workers'comp system, the SB 899, we feel has absolutely
2 devastated the injured worker. You've heard people testify to
3 you that that's not what's supposed to happen.

4 Well, I'm here to tell you, it's happening, and
5 it's happening on a daily basis.

6 I would like to turn around, and I would like to
7 ask our Executive Director, Ms. Sugarman, to add some further
8 comments, please.

9 Thank you.

10 MS. SUGARMAN: Thank you very much, Mark.

11 I'm Peggy Sugarman. I'm the Executive Director
12 of Voters Injured at Work dot Org, a new organization of injured
13 workers.

14 We've been around since January 19th, and we have
15 over 1500 injured worker members paying dues to our organization
16 to support our efforts.

17 Just one quick comment on Peter Balestrieri, who
18 you just heard from. He's had a rating on his case. And his
19 permanent disability rating under the old system would be a 57
20 percent award, which would amount to \$54,782.

21 Under the new system, he will now get a 30
22 percent rating, meriting an award of only \$21,420, a reduction
23 of 61 percent of his permanent disability benefits, and this is
24 for life.

25 So, for those of you who want to say that the cut
26 in permanent disability benefits for people with true
27 impairments as rated under the AMA guides, it should be viewed
28 as nothing more than cost savings, well I beg to differ.

1 Now, I was a former regulator in the Division of
2 Workers' Compensation eight years, Chief Deputy Director under
3 Pete Wilson and partially under Gray Davis.

4 The mission of the Division of Workers'
5 Compensation is to minimize the adverse impact of the effects of
6 work-related injuries and illnesses on California employees and
7 employers. And I'm happy to say that I helped develop that
8 mission statement, and it stands today.

9 This is supposed to be a balanced system.

10 I'm going to try to shorten my comments by saying
11 that I support the comments of Angie Wei from the California
12 Labor Federation on the three areas that she touched on, why we
13 feel we need to oppose the confirmation of Ms. Hoch. And it
14 isn't because she is not an efficient administrator and can get
15 things done. She clearly can.

16 It is the content and the policies that are
17 implemented in the course of her work that we oppose and not her
18 personally.

19 The Medical Treatment Guidelines were supposed to
20 be created, developed by 12/01/04, and were supposed to
21 incorporate the recommendations, by law, in Labor Code Section
22 5307.27 that says, and I quote,

23 "... that she shall adopt a
24 schedule that shall incorporate
25 the evidence-based, peer reviewed,
26 nationally recognized standards of
27 care recommended by the
28 Commission."

1 The Commission made their recommendation, and in
2 a meeting, when I asked why she was not incorporating their
3 recommendations, she basically told me that we must have a
4 difference of opinion on how we interpret that statute.

5 Now, I don't know how else you would interpret
6 that statute, that you shall incorporate the recommendations,
7 but clearly she's decided that she's not going to do that.

8 Not following the law, I think, is an important
9 reminder to you of the importance of this position. The
10 permanent disability ratings schedule does cut benefits for
11 legitimately injured workers.

12 The Medical Provider Network regulations were not
13 written to allow people to be taken away from their treating
14 physicians, but she did them that way anyway.

15 And one last point that was not mentioned by
16 Angie Wei, and it's a small point. But I want to point it out
17 to talk to you about the problems that injured workers have
18 getting through the system.

19 The supplemental job displacement regulations are
20 supposed to be a benefit to workers who cannot go back to their
21 employment because their employer did not offer a job within 60
22 days of the termination of their temporary disability benefits.

23 After that point in time, we know that they are
24 going to be, if they have a -- any permanent disability,
25 entitled to at least \$4,000 in a job voucher to retrain.

26 Her regulations do not allow the worker to get
27 even that minimum payment, or at least the proposed regulations.
28 And we've been asking, at least give the worker the opportunity

1 to get the minimum benefit while they have an opportunity to use
2 it and get back to work.

3 But instead, the proposed regulations make the
4 worker wait until the end of the case, while the judge
5 determines the level of permanent disability benefit. And let
6 me tell you folks, that can take years.

7 I would say that we need an administrator with
8 balance. And perhaps that's not her fault. Perhaps that's the
9 fault of her boss, who's telling her what to do.

10 But I would suggest that approving this
11 administrator, you might as well just go ahead and tell them to
12 change their mission statement, "to minimize the adverse effect
13 of work-related jury and illness on California employers," and
14 leave it at that.

15 Thank you.

16 CHAIRMAN PERATA: We are down now to 10 minutes
17 remaining.

18 MS. BOUMA: Mr. Chair and Members, Christy Bouma,
19 representing the California Professional Firefighters.

20 I will simply embrace the comments of the
21 colleagues that have gone before me.

22 I represent 30,000 firefighters who face the
23 inevitability of being a participant in this system, not the
24 possibility. They have a hazardous job, and they will have to
25 enter the workers' compensation system. And they are suffering
26 under the lack of those regulations that have been promulgated
27 as it relates to predesignation, as well as the permanent
28 disability ratings that have been promulgated.

1 For the record, I can speak for one of my members
2 who was injured just in the fall of last year who can't come
3 before you because he, too, in San Jose, look his life in
4 frustration that he could not return to work, because he could
5 not even get access to care in this system that is supposed to
6 be built to protect him.

7 So, I embrace the passion and the tears and the
8 frustration that was conveyed to you by Ms. Wei on behalf of my
9 members, and ask that you reject the confirmation of this woman.

10 Thank you.

11 CHAIRMAN PERATA: Thank you.

12 MR. HAYES: My name is Scott Hayes. I'm an
13 injured worker since February of 1999. I've been in the system
14 for over six years, and I don't when I'm going to get out of the
15 system.

16 I find it interesting that all these employers
17 got up here to tell us about injured workers getting prompt
18 treatment, but not one employer was able to produce such an
19 injured worker to testify to that.

20 I myself have never met an injured worker in the
21 last two years that has told me anything but that they've gotten
22 delay, after delay, after delay in getting medical treatment,
23 and most times they had to go to court to get it. And even
24 after they got a court judgment ordering that treatment, they
25 often had to go back to court and get the judge to reorder the
26 treatment. It's not an uncommon procedure.

27 Specifically in regards to Andrea Hoch's
28 appointment, I used to be a former claims examiner for a

1 workers' comp insurance company, and I've been reviewing some of
2 the things that she's proposed. And I do know that the Medical
3 Provider Network, as was explained to a Legislator, an injured
4 worker would be able to leave the network if the doctors in the
5 network were not providing them adequate treatment.

6 She has specifically stated in her regulations
7 that you will never leave the Medical Provider Network,
8 irregardless of any other doctor's opinion. And even if the
9 doctors are providing you proper treatment, you're still going
10 to stay in that network. I have a big problem with that.

11 Another concern I have is with vouchers for
12 retraining. She's interpreted that as, even if I'm permanent
13 and stationary today, and I need the voucher money today in
14 order to enter into retraining, I can't get that money until a
15 judge makes an award, which might not be for a year, two to
16 three years later. This unfortunately would be a financial
17 hardship.

18 Simple things even, the industrial medical
19 reviewer that's going to review whether or not treatment by
20 Medical Provider Network is adequate.

21 The release form that she's provided for injured
22 workers, the file violates most simple requirements in that it's
23 completely open ended. If I were to sign that medical release,
24 then an insurance company could get any medical records of any
25 issue, irregardless of whether or not they even apply to my
26 claim. If my back -- if my claim's a back injury, they could
27 get psychiatric records because there's no restriction on that.

28 Another concern I have is that as an injured

1 worker, this independent medical reviewer doctor's going to make
2 a decision that's going to affect my ability to get treatment.
3 And I can't verify if the insurance company has even sent that
4 doctor the records, because there's nothing in the regulations
5 that say that I get a copy of what's being sent. So, there's no
6 way to verify if the doctor's getting adequate documentation.

7 Basically whole system that I've seen changes.
8 It's a three-pronged hit on injured workers. We're not getting
9 treatment that we need. We're going to end up with higher
10 disability levels as a result. And that same disability is
11 going to be worth less money. And that money is money we need
12 in order to retrain ourselves and get back to work, because now
13 vocational rehabilitation has basically been taken away from us.

14 So, unfortunately, as much as I'd like to be up
15 here saying I can support her appointment, I feel that that
16 would be a mistake, and it would be a great harm for injured
17 workers if she continued in her job.

18 Thank you.

19 CHAIRMAN PERATA: Thank you.

20 MR. FRYER: Good afternoon. Thank you for the
21 chance to speak. My name is Ron Fryer. I'm a new member of
22 VIAW.

23 I've been locked in a battle with Travelers
24 Insurance and their submission of false medical reports written
25 by a QME Jeffery Miller. While I didn't think that an insurance
26 company was going to play fair, I didn't expect that the judges
27 would support their wrong doing and rely on their reports that
28 they know are false.

1 I would like to hear this commission question
2 Ms. Hoch regarding the Ethics Advisory Committee and their
3 oversight of work comp judges. I filed a complaint of
4 misconduct in March 2004 against four different ALJs,
5 administrative law judges, from four different district offices
6 in my case. And that occurred because I became homeless and
7 ended up in four different counties, trying to stay with
8 relatives because I didn't have a home.

9 At any rate, the case has dragged on for eight
10 years. My allegations against these four judges include
11 outright perjury by two of them, continual denial of due process
12 by all of them, refusal for literally years to rule on my
13 discovery motions that would easily prove, and conclusively that
14 the QME's reports were based on false medical history, contrived
15 by the QME and Travelers' attorney, Kevin Shutler.

16 The Ethics Advisory Committee contacted me in
17 June of 2004, after I filed a complaint, stating they found
18 merit in my complaints of misconduct to the point they voted to
19 conduct an investigation. I was told that the Administrative
20 Director's staff would complete the inquiry within 90 days.

21 Then, in December of 2004, counsel for the Ethics
22 Advisory Committee wrote me, informing me they would -- there
23 would be no inquiry until the case was finally concluded. That
24 was devastating news.

25 The administrative law judges know that they can
26 act with impunity. They've denied due process. They've
27 committed perjury. They've prevented transcripts in my case
28 from being prepared that contradict their findings. They've

1 even tried to prevent me from filing appeals, and they've even
2 sought the board's help in bringing a contempt citation against
3 me to silence me.

4 Andrea Hoch stated not too long ago that she was
5 going to review the procedures followed by the Ethics Advisory
6 Committee. I've heard nothing to date that gives me any hope.

7 If there's to be a return to the constitutional
8 mandate seeking expeditious adjudication of work comp cases,
9 then the Ethics Advisory Committee needs to have some teeth and
10 be able to quickly investigate, and put a stop to judges who
11 refuse to follow the law.

12 Ridding the division of judges apparently in the
13 pockets of insurance companies and replacing them with judges
14 who take their oath to heart will significantly reduce the
15 appeals filed by desperate workers denied their benefits and
16 treatment. It will reduce costs, and it will get workers back
17 to work, as Ms. Hoch testified she supports.

18 I've brought copies of the correspondence that I
19 received from Destie Lee Overpeck, Industrial Relations Counsel
20 for you, for your staff, for the Committee.

21 I received -- frankly, the flip-flop on their
22 promise to investigate judges Clarke from Salinas, Andrew Nash
23 in Eureka, Michael Hurley in Redding, and Gregory Cleveland here
24 in Sacramento, leaves me no better off than -- under Andrea Hoch
25 than under the prior AD, Richard Gannon.

26 My experience with the Information Assistance
27 officers is that they are woefully unprepared to offer advice
28 and help with simple procedural aspects of litigation, much less

1 with how to deal with judges who engage in misconduct.

2 I found Merle Rabin's board has been only too
3 happy in my case to cover up the wrong doing of the judges below
4 them, rubber-stamping their illegal orders and trying to silence
5 my complaints with their own abuse of the contempt process.

6 While Ms. Hoch is not responsible for the board's
7 actions, if she were aggressively weeding out the ALJs that
8 refuse to follow the law, their decisions would not need to be
9 appealed to the board in the first place.

10 While I continue to register my complaints about
11 the board with Secretary Bradshaw, who does listen, I expect the
12 AD to deal with these lower court administrative law judges. I
13 heard nothing in Andrea Hoch's press statements even
14 acknowledging what these corrupt judges are doing to the likes
15 of me, much less her outrage and plans to stop them.

16 The Ethics Advisory Committee needs teeth and an
17 AD other than Andrea Hoch who really wants to reform this
18 system.

19 Thank you.

20 CHAIRMAN PERATA: Thank you.

21 I'm going to allow the last two speakers to go
22 ahead, then we'll conclude.

23 MR. DAVENPORT: Thank you, Mr. Chairman.

24 Allen Davenport. I'm Director of Government
25 Relations for the Service Employees International Union. We
26 represent 600,000 members in just diverse occupations throughout
27 California.

28 I should say that I've been engaged in the

1 workers' comp, hearing these stories from injured workers, since
2 I came to work for the Senate in 1983, where I worked seven
3 years on the Senate Industrial Relations Committee, working on
4 some of these issues and trying to develop legitimate reforms
5 and return to work programs.

6 We still have, obviously, a long way to go.

7 In regard to Ms. Hoch, Senator Poochigian said
8 that she had the talent, skills, and aptitude to do the right
9 thing.

10 And what I heard in her testimony was that
11 apparently the right thing is to get things done on time. She
12 alluded to the ambitious timelines of the legislation.

13 Certainly this was a complicated and difficult
14 piece of legislation for anyone to administer. But it also
15 contained ambitious standards, and those standards are the
16 standards that Ms. Hoch has chosen to ignore. It's simply not
17 enough to implement the laws that you enact, to have the train
18 run on time. The train has to be on the right track.

19 And I respectfully submit that Ms. Hoch has
20 chosen the wrong track in administering this law, and ask you to
21 reject her appointment.

22 CHAIRMAN PERATA: Thank you.

23 Yes, sir.

24 MR. DOLLESIN: Good afternoon, sir. Good
25 afternoon to all Members of this Committee, and Ms. Andrea.

26 My name's Jofre C. Dollesin. I work for the
27 Department of Corrections, and got injured on March 2003, and
28 operation after that. Go back to work the get injured on

1 February 17th, 2004.

2 I'm here just two points. I would like to state
3 two cases. One, I'm against the appointment of Ms. Andrea on
4 the basis she does not have any qualifications dealing with the
5 workers' compensation case. I knew for the fact she has
6 administrative qualifications. I don't ignore that. I
7 appreciate that. But the barely essence of the point of this
8 hearing is the qualifications of Andrea. And I said a while
9 ago, she does not have any qualifications of leading this case.

10 Second, the ACOEM Guidelines. If you have a
11 chronic case, which I do, because I do have an operation, spinal
12 injury, does not deal with the chronic phase, gentlemen, ladies.
13 ACOEM just deal only the acute phase. And she does not have a
14 guidelines.

15 And every time the doctor said we need this one,
16 the insurance guys say "Reject, reject, reject, reject." It is
17 not stated in ACOEM. So what that mean? Just leave it like
18 that, as if I want to go back to work. I like my work. I proud
19 to be state service.

20 In end, I'm saying again, I'm strongly against
21 the confirmation of Ms. Andrea Hoch. Confirming her is
22 tantamount to creating another disaster in out workers'
23 compensation system in the great State of California.

24 Thank you, ladies and gentlemen.

25 CHAIRMAN PERATA: Thank you, sir.

26 That concludes the public testimony. We'll open
27 it to discussion from Members, then I'll allow Ms. Hoch to close
28 when we're finished.

1 Senator Bowen.

2 SENATOR BOWEN: Thank you, Mr. Pro Tem.

3 Let me first say to everyone who's here that I
4 appreciate the seriousness and the tenor of the conversation,
5 which I think has been respectful of two things.

6 One is our collective desire to reduce the costs
7 of the workers' compensation system, which had both among the
8 highest premiums in the nation and among the lowest benefits.
9 And I think it was our belief that we could create a system that
10 was both better for employers and better for injured workers.

11 Certainly, the premise of the conversation we had
12 leading up to SB 899 was that permanently disabled workers would
13 be held harmless. So, I'm concerned in hearing some of these
14 issues.

15 I also have a larger concern that I want to
16 raise, and that has only partly to do with you. It has to do
17 with the number of times that this administration has used the
18 process of promulgating emergency regulations that avoid or
19 dispense with the process of hearing and testimony.

20 So, I think one of the first questions that I'd
21 like to hear from you about is the need to do emergency
22 regulations that deal with the question of permanent disability,
23 which is, we've heard testimony, it was 20 percent of the cost
24 in the system -- and if you think that's wrong, I'd like to know
25 that -- and at the same time, the method by which the
26 regulations for Senator Alarcon's SB 228 are proceeding. That's
27 a bill that was adopted or passed two or three years ago, I
28 guess. There were regulations that also were due by

1 December 1st of 2004, that deal with adopting medical treatment
2 regulations and guidelines.

3 Could you discuss a little bit how it is that the
4 permanent disability guidelines require emergency regulations,
5 but the medical treatment guidelines, which are the ones that we
6 heard testimony about, that have potential to deal with injuries
7 that are not under the ACOEM Guidelines, does not merit the same
8 kind of timeframe?

9 MS. HOCH: Okay, certainly, thank you.

10 Let me talk about the emergency regulation
11 process first, if I may. Feel free to jump in if I'm not
12 answering your question.

13 The emergency regulation process does not forego
14 with the public hearing-public comment portion of the rule
15 making process. It's just a different timeframe for doing
16 so.

17 SENATOR BOWEN: Sorry, that's my misstatement.

18 It eliminates the Office of Administrative Law
19 review.

20 MS. HOCH: No. Maybe I can explain the process,
21 and that might be helpful.

22 What happens with an emergency regulation is that
23 it is submitted to the Office of Administrative Law, OAL, and
24 there has to be a justification that supports the adoption of
25 emergency regulations, and that justification is reviewed by OAL
26 to determine whether it's adequate or not to justify the
27 adoption of emergency relations.

28 What you then have is 120 days, once OAL approves

1 adoption, to go through the formal rule making process, which
2 will include public comment periods of 45 days, and subsequent
3 15-day public comment periods and a public hearing.

4 So, what it can also say is that if you are
5 making progress during that rule making process, and let's say
6 you needed some more time, there is a procedure to request the
7 director -- to request from the Director of OAL readoption. So,
8 if you were going through the process and needed more time
9 through that rule making process, you could make that request to
10 the Director, and he or she would then review and make a
11 decision.

12 So, that process is the same as if you were doing
13 permanent regs, the difference being with emergency regs, they
14 take effect.

15 SENATOR BOWEN: Well, I think the other
16 difference is that in the normal process, regulations go to the
17 Office of Administrative Law after they're completed for review
18 to determine whether or not they're consistent with the
19 statute. That is my understanding, that that's not required
20 with regard to emergency regulations.

21 MS. HOCH: It is required at the end of that
22 120-day period, when I go to OAL for permanent adoption of
23 regulations. That is the time that OAL will then review the
24 regulations for the substance.

25 So, it's a different order, but the pieces are
26 all the same.

27 SENATOR BOWEN: Right, but if the OAL review
28 comes up front, OAL can't possibly know what's going to be in

1 the -- the reason that we have in the normal process OAL
2 regulations at the end is, it's very hard to review regulations
3 to determine if they comply with a statute if they haven't been
4 written yet.

5 MS. HOCH: Sure. Yes, it's a different
6 process.

7 What I've done with the emergency regulation
8 process, again, the justification for the emergency has to be
9 approved by OAL.

10 What I've done in my process for actually both
11 emergency and permanent rule making is have a front-end informal
12 process, the advisory groups that I use to have discussions and
13 input.

14 I also post the proposed regulations on the DWC
15 web site for public comment, sometimes once, sometimes more,
16 depending on the comments I receive.

17 So in answer, in both doing an emergency reg,
18 regulation package, or a permanent regulation package, I
19 actually have this front-end informal process that I put in
20 place so that I can actually have a chance to go through the
21 issues with the public, with the interested members of the
22 workers' compensation community, so that the regulations that
23 are put in place have been vetted already, not just with the
24 Division, but with the members of the community, so I can make
25 informed decisions. But --

26 SENATOR BOWEN: I guess you're really a great
27 lawyer, I have no question. But the reason -- I mean, there's
28 no question about that. You really know your stuff, and it's

1 obvious.

2 The reason I have spent 12 years voting against
3 OAL exemptions in just about everything is because you don't get
4 the same kind of rigorous review by a separate body, a separate
5 office, that is responsible to look at the regulations at the
6 end, when they're complete; a fresh set of eyes.

7 I know you understand the value of that.

8 MS. HOCH: Yes.

9 SENATOR BOWEN: But the meat of the question
10 really is about why the process for dealing with the permanent
11 disability regulations has gone through on an emergency basis,
12 while the ACOEM, the other provisions under 228, are not taking
13 the same -- don't have the same sense of urgency?

14 MS. HOCH: I can address that right now.

15 The permanent disability regulations had a
16 statutory deadline included in SB 899, and we were also in a
17 workers' compensation crisis with the permanent disability
18 rates. So, that was part of the reason for using the emergency
19 regulation process for the permanent disability regs.

20 With regard to the Medical Treatment Guideline
21 regulations, that was part of SB 228, and the statutory language
22 provided that I would be adopting guidelines after receipt of a
23 report by the Commission on Health and Welfare and Workers'
24 Compensation, commonly called CHEESWIC.

25 SENATOR BOWEN: I really hate to use the word
26 CHEESWIC in a public process.

27 MS. HOCH: Commission on Health and Safety --

28 SENATOR BOWEN: I'm not criticizing you. It's

1 just a horrible acronym.

2 MS. HOCH: Well, I didn't come up with it.

3 SENATOR BOWEN: I know.

4 MS. HOCH: I'll just call it the Commission.
5 That might be a little better.

6 SENATOR BOWEN: That's good. We can agree on
7 that.

8 MS. HOCH: The Commission adopted their report on
9 November 15th, 2004 at their Commission meeting. That gave me
10 two weeks to -- if I was ever going to meet the December 1, 2004
11 deadline.

12 That report was lengthy. It took some time to
13 absorb and further to absorb. So, what I did after receiving
14 that report is, I didn't want to sacrifice the input, the public
15 comment process, in order to meet that deadline.

16 And what I did is, I held a public hearing the
17 first or second week of December so I could hear all the
18 different concerns that people had with regard to that. Then I
19 set up an advisory group to meet early 2005 to discuss the
20 issues.

21 And the one difference, I would say, with the
22 Medical Treatment Utilization Guideline regulations, which is a
23 mouthful, is that my actions were -- I was -- I had to wait for
24 the report in order to move forward on my regulatory process.
25 Once I got that report I would say I have gone through that
26 process, and I'm pursuing that process, and actually proposed
27 regulations that I've received comments from the advisory group
28 members.

1 Also, with the Medical Treatment Utilization
2 Guideline, ACOEM is in place. So there is, you know, a Medical
3 Treatment Guideline in place that is being used by the workers'
4 comp community until I come up with my regulatory package for
5 utilization guidelines.

6 SENATOR BOWEN: How would you respond to the
7 injured workers who are here today and others similarly situated
8 who say that for them, there isn't anything in place?

9 MS. HOCH: Well, it's difficult sometimes. I'll
10 be very honest with that, because I don't know the exact
11 situation and what they've just gone through in their cases, all
12 the way to have all the facts.

13 But ACOEM is something that was in SB 228. I
14 think there was a learning process with the insurance carriers
15 who were learning to implement and had to implement a
16 utilization review program. And that people are learning the
17 process and learning what works and what doesn't work.

18 What I would say to an injured worker who was
19 having their treatment denied by an insurance carrier is there's
20 some options for that injured worker to seek recourse, one of
21 which is to request an expedited hearing before a workers'
22 compensation administrative law judge to resolve the dispute.

23 A second one, of course, is to pursue the
24 internal appeal process that may be -- that's in existence with
25 their insurance carrier.

26 They can also submit a claim -- not a claim, I'm
27 sorry -- a complaint to my Audit Unit. Right now we are
28 gathering those complaints, and those complaints could at this

1 point under the current law, current state of the law, trigger a
2 target audit.

3 What I'm also working on in conjunction with the
4 ACOEM, with the denials of medical treatment request, is penalty
5 assessment regulations for what I call violations of the
6 Utilization and Review regulations. And those are in progress.
7 I have a draft out to the advisory group, and I have a -- I plan
8 to have a second draft out to the advisory group and a posting
9 on the web site, hopefully, next week.

10 So, there's ways for the injured worker to get
11 their dispute resolved both in the court system, through the
12 Audit Unit, and eventually with penalty assessments with my
13 regulations.

14 SENATOR BOWEN: Let me set aside for a moment the
15 question of required empirical basis. We'll come back to that.

16 But the testimony I heard was that there is, in
17 fact, not a way for people who have certain kinds of injuries
18 that are not dealt with under the ACOEM Guidelines.

19 I'm not a specialist in workers' comp law, so in
20 the process of learning all of this, and I know you weren't
21 either when you got there, but basically their testimony is that
22 because the ACOEM Guidelines don't deal with certain kinds of
23 injuries, particularly back injuries and chronic pain, that
24 there in fact would be no statutory or rule-based basis for any
25 administrative proceeding that could provide relief, because
26 there isn't anything that entitles these people to treatment.

27 MS. HOCH: Actually the statute actually covers
28 that situation, SB 228 and 899. If an injury is not covered

1 under ACOEM Guidelines, the statute says that other evidence,
2 nationally recognized evidence-based guidelines can be used to
3 support that treatment request.

4 So, there is a procedure in place in statute that
5 covers that situation already. So if one -- if one's injury and
6 treatment was not covered by ACOEM, there is a way to address
7 that by providing, like I said, a nationally recognized
8 evidence-based guideline to support that treatment request.

9 SENATOR BOWEN: But that evidence-based, peer
10 reviewed, nationally recognized standard of care is one that
11 under the statute is required to be adopted by you in
12 consultation with the Commission, and that's not done, so there
13 isn't anything.

14 MS. HOCH: Actually there's another section that
15 is, I think, at the end of the section that deals with the
16 Medical Treatment Utilization Guideline, and I can find it in a
17 moment, most likely, that is separate from that in a sense that,
18 ACOEM's in place, and whatever medical treatment guideline is in
19 place, let's say I pick ACOEM or something else, there's a
20 procedure for -- if the injury's not covered under that
21 applicable guideline, you can support your treatment request
22 with another evidence-based guideline.

23 So, that's in the statute. That is in my draft
24 regs right now.

25 SENATOR BOWEN: When would we expect those draft
26 regs to come into place?

27 Because basically what's happening is that
28 everyone's having to litigate those claims. If they're not in

1 the ACOEM Guidelines, they're basically having to go litigate
2 that and demonstrate that there's another standard.

3 The guidelines, when they come out, will solve
4 that problem.

5 MS. HOCH: The guidelines will provide additional
6 guidance. And that's the whole idea with the regulations that
7 adopt -- a guideline will provide additional guidance to the
8 users on how the -- what the law means.

9 SENATOR BOWEN: So, we should expect the
10 completion of that process when?

11 MS. HOCH: I would say June of this year.

12 SENATOR BOWEN: Thank you.

13 Let me go back to the question of the report on
14 the empirical basis and the amount of time that it took to get
15 the Commission's study under SB 228.

16 One of the things that I found most disturbing is
17 the testimony with regard to the statute's requirement and the
18 crosswalk study. And specifically, the testimony that I
19 received, that while the statute requires a particular crosswalk
20 study and updated crosswalk study, that you actually told RAND
21 not to update the crosswalk study that would comply with the
22 statute.

23 Again, I've never served on the Insurance
24 Committee, and after all of this I can say that I hope to keep
25 it that way.

26 So, if I don't have the exact terminology, please
27 respond to what I'm trying say.

28 MS. HOCH: I think I know what you're trying to

1 ask, and so you're doing a good job.

2 What you're referring to is the crosswalk
3 reference. It refers to the permanent disability rating
4 schedule, not the medical treatment utilization.

5 SENATOR BOWEN: That's correct, going back on
6 that permanent, PD.

7 MS. HOCH: So, what I do when I look -- the first
8 thing I did in my job was read SB 899 more than once, believe
9 me. I look at the statute. When I look at the statute that
10 governs the new permanent disability schedule, that's Section
11 4660 of the Labor Code, it says that, if I could read it,

12 "For purposes of this section, an
13 employee's diminished future earning
14 capacity shall be a numeric formula
15 based on empirical data and findings
16 that aggregate the average
17 percentage of long-term loss of
18 income resulting from each type of
19 injury for similarly situated
20 employees."

21 It then says,

22 "The AD,"

23 That's commonly what I'm called,

24 "shall formulate the adjusted
25 rating schedule based on
26 empirical data and findings
27 from the December 2003 RAND
28 Interim Report and upon data

1 from additional empirical
2 studies."

3 The statute doesn't require a crosswalk. What
4 the statute requires me to do is to look at, first, at the
5 December 2003 Interim Report by RAND, and I did that. One of
6 the first things I did when I came on board was to enter into a
7 contract with RAND so they could provide me with technical
8 support. So, and I used all the data. All the empirical data
9 that generated, that was relied upon in that Interim Report I
10 used in my formulation of the numeric formula.

11 Part of that is actually documented in a recent
12 December 2004 RAND working paper that shows how I came up with
13 the rankings of 22 body categories.

14 So, the crosswalk is something that's not
15 specifically required by the statute. The statute points me to
16 the RAND data, which I used. It also points me to additional
17 empirical studies.

18 What I discovered as AD is that there are no
19 other empirical studies available at this time. And my
20 viewpoint of that language is, it's really in reference to the
21 future revisions, because we don't want to be stuck in time and
22 only have to look at the December of 2003 Report.

23 As we go with future revisions, which are
24 required, we want to be able to look at additional empirical
25 data as it is developed and available.

26 SENATOR BOWEN: Going back to a hearing that I
27 didn't attend, but just have a report on, the December 7th
28 hearing of the Senate Labor Committee, I understand that you

1 testified that the data in the RAND Report was of limited value
2 in arriving at an interpretation of diminished earning capacity
3 because it was based on the old permanent disability schedule.
4 And that RAND had said that it would take them only a few months
5 to modify the data for use with the new schedule.

6 MS. HOCH: Yes, and I can answer that also.
7 Hopefully I can answer all the questions.

8 Let me go back. At that hearing, we were talking
9 about I'm -- sorry; I just lost the frame of reference.

10 SENATOR BOWEN: The December 7th hearing,
11 diminished earning capacity, the value of the RAND Report, which
12 I think all would agree, there are no other empirical studies.

13 MS. HOCH: So at this point I looked at the RAND
14 data, which was -- the empirical data in the RAND Report is
15 based on 1990s earnings loss, wage loss data, which is based on
16 what I call the old PD system.

17 And the gold standard would be to gather data
18 under the new system. And that would take into account return
19 to work incentives in SB 899, and what's actually happening
20 under the system. And that's something I'm committed to do.
21 I've actually put that in my regulations, that I am committed to
22 gathering and analyzing data under what's happening now so we
23 can make revisions in the future that are based on empirical
24 data.

25 The crosswalk, and maybe what I can explain, was
26 something that was proposed as a means to translate the data in
27 the RAND Report to the AMA Whole Person Impairment Ratings.

28 I made a decision that the crosswalk approach

1 would not be pursued, and there were three reasons for that.
2 The most important is that we're -- we have two completely
3 different systems in place. The old system, which I'll call it
4 for use of reference, is based on subjectives, and work
5 restrictions, and is not based on objective medical evidence.

6 Maybe I can give you a little highlight from my
7 managers. Before SB 899, the Disability Evaluation Unit that
8 does the ratings said the average rating calculated or estimated
9 the average rating to be 24.3 percent; 6 percent of all ratings
10 are based on objectives only; 70 percent of all ratings are
11 based on work restrictions, which are like no heavy lifting, no
12 prolonged standing, no repetitive movement. The average
13 objective rating is 11.5 percent under the old system. Average
14 work restriction rating is 25.2 percent.

15 So, when I look at the old system, and the new
16 system takes out the subjectives, takes out the work
17 restrictions, and brings us to the objective medical evidence
18 that is going to be the foundation of the new system, and
19 basically the comparison between the two is not going to
20 translate. It's not going to -- the first system, the old
21 system, in my viewpoint, was flawed because you're not basing
22 the ratings on objective medical evidence. So that crosswalk is
23 not going to produce an accurate or useful comparison.

24 The other concern I had, which is actually in the
25 RAND 2003 Interim Report, is in the old system, there was a wide
26 range in the ratings. You could have a -- the same patient with
27 the same medical records, and the doctors who were reviewing
28 that could come up with widely different ratings, and the raters

1 themselves, who are experts on this in my Division could come up
2 with different ratings.

3 So, my concern was that the crosswalk was not
4 going to produce valid results that would actually be useful
5 because the system itself was flawed, and also there's too much
6 variety or variation in the ratings that one gets under the old
7 system.

8 SENATOR BOWEN: Although presumably the crosswalk
9 should demonstrate that.

10 I guess question for policy makers is, the
11 premise was that injured workers wouldn't be harmed. If we
12 aren't going to use a crosswalk study to compare the old system
13 and the new system, how are we to compare what's happening to
14 injured workers under the old system and the new system?

15 MS. HOCH: I think in all honesty, it's virtually
16 impossible to compare.

17 There's been estimates out in the workers' comp
18 community of the impact of this.

19 What I can tell you is that some ratings will go
20 up, and there was a recent report issued by SKIF that showed
21 that, based on the data that they have available, that ratings
22 for -- in the new system, for amputations of fingers and
23 limbs -- fingers and thumbs, rather, not limbs -- actually the
24 report showed that they would go up. Some will go down.

25 SENATOR BOWEN: I come back again to how, if the
26 premise was that permanently disabled workers would not suffer,
27 that what we were trying to do was deal with things like free-
28 standing surgery centers, which is another question, you're just

1 saying that it's impossible ever for us to determine whether
2 that expectation was met?

3 MS. HOCH: I think you have to look at other
4 parts of SB 899 for that expectation. I mean, SB 899 also
5 provided immediate medical care to an injured worker. That was
6 something brand-new, to \$10,000, before the claim is accepted or
7 denied.

8 So, you have an immediate medical care which was
9 not available before.

10 You also have Medical Treatment guidelines. You
11 have evidence-based guidelines that are deciding what treatment
12 is appropriate to cure or relieve that particular injury.

13 SENATOR BOWEN: So how do we deal a gentleman
14 like the teacher who was here?

15 We each as human beings are individual. And the
16 reason that pharmaceutical companies continue to develop
17 different drugs to treat the same illness or injury, and that we
18 have different therapeutic modalities is that not everybody
19 responds in the same way.

20 I think it's been of the major criticisms of the
21 managed care system is that you get into this list of questions
22 that may not have a whole lot to do with the person.

23 How do you deal with someone like Mr. Claiborne,
24 who've been through an extensive process of trial and error, had
25 to deal with side effect, and now finds that under the new
26 objective guidelines, he has no ability to get the medication
27 that he used for pain relief?

28 MS. HOCH: I would advise -- well, I won't say

1 advise, but I would -- the remedies available to that injured
2 worker are: seeking an expedited hearing before a workers' comp
3 ALJ to get that issue resolved; go through the internal appeal
4 process; or rebut that with another evidence-based guideline
5 that supports that treatment regime.

6 SENATOR BOWEN: His testimony was that he had, I
7 believe, on February 8th was the date that he had written --
8 basically I think it was an appeal, and that he has received no
9 response to date.

10 Is that an expedited resolution of his case?

11 MS. HOCH: I think the appeal -- I understood the
12 appeal he was talking about was the internal appeal process with
13 his insurance carrier.

14 SENATOR BOWEN: I guess it doesn't really matter
15 to me which process it is. If he's been without pain medication
16 effectively from February 9 to April 25, I want to know whether
17 you think that complies with the need for an expedited review of
18 denials?

19 MS. HOCH: He can seek an expedited hearing and
20 get that issue --

21 SENATOR BOWEN: My question was, is that an
22 adequate expedited review, if it's been three months, and he's
23 had not even a response?

24 MS. HOCH: I would say if he -- my understanding
25 is that's an appeal with the insurance carrier. That does not
26 sound like a proper resolution or processing of that appeal.

27 I don't have all the facts.

28 SENATOR BOWEN: I don't either.

1 MS. HOCH: I would encourage Mr. Claiborne to
2 send that information to me at my Division Headquarters, and
3 then we would forward it to the Audit Unit and possibly look
4 into it.

5 SENATOR BOWEN: Let me go to one other issue that
6 was raised in the analysis, and then I want to draw the lens
7 back a little broader. It's the bump-up bump-down question.

8 Again, the concern with regard to small employers
9 of 50 employees or less, is that only one-half of that
10 incentive-disincentive scheme has been applied.

11 Can you respond to why you believe that to be an
12 appropriate interpretation of the law?

13 MS. HOCH: If I can, maybe put that into context
14 as to where we are.

15 That's Labor Code Section 4658 (d)(3), (a) and
16 (b).

17 With the return to work provisions, I have -- I
18 put out proposed regulations to an advisory group for
19 discussion. And in looking at this language, I put out an
20 interpretation of the language in my regulations.

21 The advisory group members have submitted their
22 comments back to me and to my team, and that's something that I
23 just -- I haven't reviewed yet but will, and talk with my team.
24 So, it's an interpretation that I will look to and reconsider in
25 this process.

26 We're right at the beginning process right now.
27 Generally what I do with my advisory groups is, I tend to want
28 to put out my proposed regulations because it's a good starting

1 point and helps focus the discussion.

2 In looking at the position that was stated by Ms.
3 Wei, I would say I need to take another look at it.

4 And part of this is, I always go back to the
5 statutory language and try to interpret it. And I would say
6 that I will take a look at it and see whether that
7 interpretation is a more reasonable one given the statutory
8 language, and it may well be.

9 SENATOR BOWEN: Let me talk, just one more
10 question, about the FEC number. Again, this is based on my
11 reading of the discussion in December before the Senate Labor
12 Committee. This is the mathematical formula, the 1.1 to 1.4.

13 MS. HOCH: That's actually the adjustment factor.

14 SENATOR BOWEN: Right.

15 And the explanation I've been given for how we
16 got there is that the law requires the use of empirical data to
17 create these regulations, and that you made a policy decision to
18 use this number. Opponents of it claim it's arbitrary.

19 Can you respond, please?

20 MS. HOCH: Actually, Thank you for asking that
21 question.

22 The policy decision people were referring to, I
23 believe, is my policy decision that the diminished future
24 earning capacity adjustment would be an upward adjustment only.

25 In the RAND 2003 Interim Report, there was
26 actually statements in there that the earning capacity
27 adjustment could be an up or down factor, depending on the type
28 of injury.

1 What I -- I made a decision that it would only be
2 upward adjustment. I would not do any -- everything would go
3 up.

4 SENATOR BOWEN: But the RAND researcher who did
5 the study testified in December that if you did the formulation
6 from the adjusted rating schedule based on empirical data and
7 findings, he was asked, "Would you conclude with the proposal of
8 1.1 to 1.4?" His response was "No."

9 So, where is the justification for that rating
10 schedule?

11 MS. HOCH: I can go through that if you'd like,
12 okay.

13 And I first want to say -- Dr. Ravel was the
14 person that was testifying for RAND -- is that there may be
15 differences of opinion as to what my ultimate decision is in my
16 regulations, but the whole point of this as far as me being --
17 I'm an effective decision maker because I take in comments,
18 good, bad, indifferent, and work through those comments. And
19 not everyone will agree.

20 But let me walk through, if I may, what I call
21 the DFEC, diminished future earnings capacity, new acronym with
22 these regs, regulations and statutory provisions, how I came up
23 with that.

24 First what I did is, I went to RAND and went to
25 one of the user data that was used and was the basis of the
26 December 2003 Interim Report. What I was -- the first thing I
27 wanted to do is, okay, you have all this data on wage loss and
28 ratings under the old system. How can we divide this data up to

1 make it the most precise as far as the types of body categories?

2 We made a decision that we would use 100
3 observations as a threshold. And what we did, they came up with
4 22 body categories using that as a threshold, which is
5 relatively standard in statistical circles, so I'm told.

6 We had standard ratings for each of these body
7 categories, and we also had a proportional wage loss figure.

8 SENATOR BOWEN: I guess the question's not what
9 were the determinations, but what was the empirical basis?
10 Because the complaint is not that there was a change or a
11 schedule adopted, but that it's arbitrary and that there's no
12 factual basis.

13 So, on what did you base the 22 categories and
14 all of that? I just want to know what the back --

15 MS. HOCH: That was based on the data that had
16 been collected by RAND for the December 2003 Interim Report.
17 They collected data on standard ratings under the old system and
18 also wage loss data from EDD.

19 So, I used those two factors, those two sets of
20 data, to come up with how many observations do I have based on
21 the standard ratings? I came up with 22 body categories that
22 had, in my viewpoint, a sufficient number of observations, and
23 that RAND agreed also that 100 was a good threshold number.

24 What I did is, I divided -- or I had the -- I
25 divided the standard rating by the proportional wage loss
26 information supplied by RAND and came up with a ratio, the ratio
27 for each of those 22 body categories. The ratio was a range
28 from .45 to 1.81.

1 It's a little bit counter-intuitive. The 1.81
2 ratio, which showed that you have those categories, like fingers
3 and hand, would have the lowest -- those had the lowest relative
4 wage loss to standard ratings as far as a ratio.

5 The .45, which was psych and vision, had the
6 highest relative wage loss to standard ratings. So, what I did
7 is, I put thing in ranks because it made sense to me, because it
8 was more -- it made a chart that more easy to use. And psych
9 and vision had the highest adjustment factor, while fingers and
10 hands had the lowest adjustment factor.

11 The factor of 4, which I call it, came from --
12 the 1.81 ratio is four times the .45 ratio number.

13 And that was how -- and I came up with a numeric
14 formula --

15 SENATOR BOWEN: That's your schedule. It's not a
16 schedule from another empirical data base.

17 I'm really concerned. And I guess the next issue
18 is, your next review is not due until 2010; right?

19 MS. HOCH: Yes, as mandated by statute.

20 But what I included in the regulations recently,
21 in the last 15-day comment period, was a commitment that I would
22 collect and analyze data. And if I had a statistically valid
23 sample that supported a revision sooner than the five-year
24 period, I would do that revision sooner than the five-year
25 period.

26 I've been saying that to everyone, that I'm not
27 going to collect all my revisions and do them all at the
28 five-year mark. If I have data that supports a revision sooner,

1 I will do it.

2 SENATOR BOWEN: I guess my main concern is that
3 by telling RAND not to do the crosswalk study, which I think
4 would have shown -- it will show, if you do a crosswalk study,
5 that there was a big variation in awards in some kinds of
6 permanent disabilities.

7 But I'm always skeptical when people decide just
8 not to do any analysis at all, because it makes me think that
9 there's something that we don't want to know.

10 MS. HOCH: We did an analysis. Like I say, I
11 gave the reasons for not doing the crosswalk.

12 What we did is, we made -- I made an assumption
13 that the relatives among these 22 body categories would be the
14 same in the old system and in the new system.

15 We also had some limited data from the State of
16 Colorado, not enough to be categorized as something I could use
17 across the board, that supported, tended to support that
18 assumption. So, I made an assumption.

19 SENATOR BOWEN: So how do we as policy makers
20 evaluate whether or not that was a good assumption?

21 MS. HOCH: We'll be evaluating it as we go
22 forward in the future, collecting data under the current system,
23 which also will take into effect the return to work incentives.

24 I'm hoping that the return to work incentives in
25 SB 899 will actually result in, you know, a lower diminished
26 future earnings capacity figure because people are going back to
27 work.

28 SENATOR BOWEN: That's certainly one of the

1 goals.

2 Let me go to the issue of rates, overall rates.
3 One of the comments that I've gotten, particularly from small
4 businesses in my district, is that they don't know who's seeing
5 rate decreases, but it's not them. That they are still --
6 they're not getting 30 percent rate increases any more, but
7 they're still seeing rate increases, even if they have no claim
8 history.

9 Why is it, in your opinion, that we are not
10 seeing, after several reforms -- and I think we had testimony
11 from some of the business community that it's some of the
12 earlier reforms that are finally giving us rate reductions --
13 why is it that the claims to payment ratio is a dollar to 45
14 cents, the payment to claims, but we're still not seeing an
15 actual reduction in the rates to nonprofits and small
16 businesses?

17 MS. HOCH: And my initial -- my response, not
18 initial response. It is my response, is that the rates for the
19 insurance companies, or the insurance industry, that's something
20 which is not in my province. That's in the province of the
21 Department of Insurance with Commissioner Garamendi. And it's a
22 process in place to determine a pure premium rate, pure premium
23 advisory rate process in place that the Commissioner goes
24 through to determine what the advisory rate should be.

25 Then insurance companies have, it's my
26 understanding, then are not required to adopt that, but
27 certainly you hope they are persuaded to.

28 I can only do what I can within my jurisdiction.

1 What I'm trying to do is to implement the reform measures, all
2 three, not just on time. I heard a comment earlier about, I was
3 on the wrong track, I think; that I was looking at the deadlines
4 and not looking for substance.

5 I look at both. I would say that I meet the
6 deadlines, but I do not sacrifice substance or quality in
7 meeting those deadlines.

8 But my viewpoint, again, is that my job is within
9 the workers' comp community, within the workers' comp system,
10 and I can do what I can in that system. And then the next step
11 is really with the Insurance Commissioner.

12 SENATOR BOWEN: One of the things that will be
13 within your purview and that's in process is the regulations
14 under SB 899, that deals with utilization. And I know we had a
15 great deal of concern over a fee schedule for the free-standing
16 surgery centers, which had, and still have to this day, no limit
17 on the cost to employers.

18 It would seem to me one of the things that we
19 could do that might have the most impact on cost would be to
20 speed up the development of the schedule that sets limits on
21 those kinds of procedures.

22 I know they're not due until the end of 2006, but
23 when you're looking at what order to do things in, how do you
24 calculate the potential cost savings for doing things like that,
25 with the order of priority of your work, realizing from the
26 beginning that you have more to do than any human being could
27 possibly do.

28 MS. HOCH: Well, it basically sounds like how do

1 I set my priorities on the regulations.

2 SENATOR BOWEN: The question is, you know, if we
3 have something that we think was a huge cost driver, and I'm
4 convinced that the surgery centers are a huge cost driver, with
5 the lack of any fee schedule whatsoever, probably -- it's
6 certainly our fault for setting such a late deadline, but part
7 of a compromise package.

8 How do we move on things like that, that we think
9 that's one where there would be no impact whatsoever on injured
10 workers; right? We have a totally out of control cost structure
11 for a certain segment of the medical provider community. They
12 still get to charge whatever they want, and yet we can't get an
13 injured teacher payment.

14 MS. HOCH: And fee schedules are one of my
15 priorities for 2005, the remainder of 2005.

16 Let me also put that in context as far as -- any
17 provider of medical care in the workers' compensation system is
18 now going to be subject to utilization review. So, that's going
19 to apply to everyone.

20 So, regardless of the fees being -- that are able
21 to be charged, that -- there's a UR process that has to be in
22 place. And that UR process will also will incorporate evidence-
23 based guidelines to determine whether that treatment is
24 justified or not.

25 So, those two measures in place will help,
26 because we have every -- all the providers will be subject to
27 the same rules, so to speak.

28 With regard to fee schedule, it is something that

1 I'm working on putting together a team within the division that
2 has the expertise and knowledge so we can get it done
3 efficiently and effectively. So, that is a priority for me.

4 SENATOR BOWEN: Then my final word is not a
5 question; it's a comment.

6 Someone testified that a vote on this
7 confirmation is a vote for reform.

8 And I want to disabuse anyone who's listening to
9 this of that notion. This body voted -- the Senate, the
10 Assembly -- voted overwhelmingly although not unanimously for
11 reforms. Those reforms, at least my vote, was premised on the
12 view that permanently disabled workers would not be harmed, and
13 that the cost savings would come from better accountability in
14 the system.

15 What I've heard today leads me conclude that's
16 not what's happening right now. That doesn't mean I don't
17 support reform.

18 CHAIRMAN PERATA: Mr. Battin.

19 SENATOR BATTIN: Thank you for enduring your
20 confirmation hearing.

21 MS. HOCH: I guess I should say thank you to all
22 of you also.

23 SENATOR BATTIN: That's why we get paid the big
24 bucks.

25 First off, let me just say having met you and
26 talked with you several times talks, and talked to a lot of my
27 colleagues about you, about what their impression of you is, it
28 seems to be universal that you just seem to be the best person

1 capable of doing this job. Capable, no nonsense, efficient,
2 dedicated, driven, all of those adjectives I just hear over and
3 over again.

4 It was nice -- for the longest time, actually, I
5 didn't even know what political preference you were, because I
6 know Lungren hired you, and Bill Lockyer promoted you
7 repeatedly.

8 I know that you have a great reputation from the
9 Attorney General's Office, and it's a very important and
10 somewhat esoteric policy area we're in, and it is important we
11 have somebody who is up to the task.

12 And I think whether you agree or disagree with
13 the policy directions, and listen to the witness here today,
14 nobody said you weren't. Everybody said that you were have
15 focused on it. Some of the people disagreed with the decision
16 or path you were going.

17 I heard a lot of the arguments leading up to this
18 was about legislative intent, legislative intent. It's very
19 interesting to hear that. I went back and reviewed exactly how
20 the bill came to be, and it really was more of a conference
21 report that was negotiated in the very final evenings, and then
22 came to the Floor.

23 And there's no legislative record, per se, that
24 you can go back on. We didn't have really long hearings where
25 the bill, you could say this is what the legislative intent was.
26 And in reviewing what legislative intent is, it is not just what
27 the author says. If it was, then, you know, Chuck Poochigian
28 would be sitting here and telling us what his intent was. It's

1 what the different Members of the Legislature said at the time,
2 as bill was moving through.

3 So looking back, the best we could come up with
4 are just a few comments like Senator Soto, "Democrats and
5 Republicans are sharing the pain with this bill."

6 Senator Speier, "Our work is not done, but this
7 is a good start."

8 Our Pro Tem, "I've heard nothing but pain and
9 gloom from small businesses and nonprofits in my district.
10 Politics is the art of the possible. I'm going to vote my
11 district, and we have done as well as we can with this
12 compromise."

13 And my three favorites, Senator Burton, "This
14 bill is not an evil thing for the working men and women of this
15 state. Could be better, but is in no way, shape or form evil.
16 They, all sides, had to make sure it was right. I feel very
17 comfortable with an Aye vote, and finally comp has seen the last
18 of John L. Burton."

19 That left it to you, as the Governor's appointee,
20 to come up with the regulations that you were tasked to, taking
21 from the intent of what little was said, but also what was
22 directed in the bill. And I think that, like I said, you've
23 done a very admirable job in doing that.

24 Before I ask you a couple questions, I just want
25 to continue a little bit more on my statement.

26 A lot of the witnesses today were very
27 compelling. And it's always very sad to hear people's problems,
28 and that's one unfortunate part of the job in a bunch of

1 different committees that we all serve on. People are here in
2 front of the Legislature because they have terrible problems,
3 and we -- it's our responsibility to share those, and
4 understand, and try to do what we can to help them.

5 But what I don't want to lose sight of also is, I
6 remember sitting in my office in my district when Dr. Farmer,
7 who is Executive Director of the Foundation for the Retarded of
8 the Desert, was in my office in desperation because workers'
9 compensation was just about to drive him out of business. And
10 he had to cut back on services to his clients. He had to
11 basically at the time violate the staff-client ratio which was
12 mandated because he couldn't afford to pay people, and he
13 couldn't raise his rates because he didn't have any rates. And
14 he was in the largess of the community and what benefits or
15 money he could get from the state, which was of course cutting
16 everybody back because we have a budget deficit, and he just
17 said, "I don't know what to do. I have all these people that I
18 am responsible for, all these great clients of ours that are
19 doing their best to make their way in the world, and help me."

20 And the stories like that, everybody heard.
21 Everybody in the Legislature heard that the businesses were
22 being moved out of the state.

23 I had another business come in, an engineering
24 firm, two men who were engineers. I had know idea why they had
25 come to see me. I didn't ask, put out a call, "Could you please
26 come talk to me about workers' compensation." But suddenly I
27 started getting people out of the blue coming, making
28 appointments in my district. They came into see me, and they

1 said, "We just want you to know that we have dissolved our
2 partnership and we've dissolved our business. We have 17
3 employees; had 17 employees. It is now to a point where we have
4 made the decision, it was very tough, that because we have a
5 skill because we are licensed engineers, we can go out
6 independently and hire -- or be hired by other firms to do work
7 and make more money than we could by having our business. And
8 now we have to look out for ourselves and our children."

9 And then the other gentleman who -- it was
10 interesting because he never talked almost the whole time we
11 were going over this, he started to well up and get very teary.
12 I said, "I'm sorry, but what's the matter?"

13 He said, "These people, these people that we let
14 go, they're my family. I'm responsible for them. You know,
15 I've been -- I've heard their stories about their kids, and
16 we've had to tell them that they don't have a job any more, and
17 it's the g-damn workers' comp that has driven us out."

18 We can't as Legislators lose sight of that. The
19 system that we had in California was bankrupting our
20 businesses. And that it is vital, was vital, is vital, that we
21 reform it.

22 Senator Bowen said a minute ago that one of the
23 things that bothered her was that we had some of the highest
24 workers' comp rates and some of the lowest benefits to
25 employees. That means there's somebody who is making a hell of
26 a lot of money on the system. And I think those are the people
27 that are here and complaining and crying the loudest.

28 It is important that we do both, that we improve

1 the system so that our employees are well cared for that get
2 hurt, and that we also improve the system so businesses can once
3 again thrive in California and employ workers.

4 Having said that, let me ask you a couple
5 questions.

6 You mentioned advisory groups a minute ago. Tell
7 me how many advisory group meetings have you had to assist you
8 in drafting the regulations? Who are the members of those
9 groups? And how do you select them?

10 MS. HOCH: Advisory groups. They're a key
11 component of my process.

12 I actually did count them up. I've had nine so
13 far. I've had three advisory group meetings for the permanent
14 disability regs, regulations. Two, at least two that I can
15 recall advisory groups meetings for the medical provider network
16 regulations. I had one meeting for the independent medical
17 review regulations. One for return to work and predesignation.
18 And I've had one for the utilization review. And I've had one
19 for the one unfair business practice violations. So, I've had
20 nine to date.

21 I attended eight of the nine advisory group
22 meetings.

23 The representatives are diverse. The interest is
24 high in workers' compensation. I have representatives from
25 labor, from business, from claims -- claims representatives,
26 medical providers, and specialty societies when the issues
27 involve medical issues.

28 My viewpoint is, I have a twenty -- I have a

1 list, a core list of people who have asked to be invited to
2 every single advisory group. That list has 26 representatives
3 on it. Anyone who wants to go, or wants to come to an advisory
4 group meeting can generally give me a business card, send me
5 e-mail, and basically is invited.

6 So, it's a meeting that is open to anyone who's
7 interested to attend. And generally they're very well attended.
8 My guess would be between 20 and 30, easy, at each advisory
9 group. I've had some that have had 40 to 50 people attend.

10 SENATOR BATTIN: Do you favor input over one
11 group over another? How do you decide which suggestions to
12 accept or to reject?

13 MS. HOCH: I would say I don't favor any of the
14 groups. And I don't adopt wholesale any of the groups, and
15 representative's suggestions.

16 What I do is, I generally engage in the
17 discussion at the advisory group so I can sort through the
18 issues, get different input, ask questions when I don't
19 understand why someone is concerned about a certain issue in a
20 certain way. And when I get -- and I also follow up with
21 written comments after an advisory group.

22 So, you have a verbal discussion to kind of sort
23 through the issues, then I generally give two weeks, sometimes
24 less, sometimes more, to the advisory group members to send me
25 written comments, so they've had time to think about
26 discussions, maybe go back to their group and talk about the
27 issues so they can come to a consensus on their position.

28 I personally review all the written comments.

1 And then I go and meet with my team members at the division and
2 talk about the comments and work through them, case by case, and
3 decide which comments are really -- need to be incorporated to
4 address the issue, whether I have the statutory authority, is it
5 within my scope. And I try to take different language and make
6 revisions to the regulations case by case, depending on the
7 comment made, not who makes the comment.

8 SENATOR BATTIN: One of the things, statements, I
9 heard over and over again during the debate on workers'
10 compensation was that California had the highest permanent
11 partial disability rates in the country, and that it took longer
12 for our workers to come back to the job than in other states.

13 In your opinion, and looking at the data, was
14 that the case?

15 MS. HOCH: That's -- that was what I was informed
16 of also.

17 SENATOR BATTIN: So, you are now, through your
18 regulations, causing that to change?

19 MS. HOCH: Correct.

20 SENATOR BATTIN: It never made sense to me.

21 Another way to phrase that is that workers in
22 California get hurt more and don't heal as fast, because that's
23 the same. It's just a more abrupt way of saying that, unless,
24 of course, there was a lot of money in there, on permanent
25 partial disability awards to be made, and a financial incentive
26 to make sure that people were receiving those awards.

27 Let's change track. What efforts have you made
28 to collect and analyze data under the new schedule that you're

1 working on? And if the data supports revision to the diminished
2 future earnings capacity adjustment, when will you make the
3 regulatory revision?

4 MS. HOCH: I actually have a meeting scheduled
5 next week with my -- with my team members. I'm sorry, a meeting
6 scheduled next week with my team members and managers to discuss
7 the data collection elements, and whether we need any revisions
8 to our data base to make that data collection happen.

9 We are revising our data base components for the
10 rating system, for the rating unit, so see we can collect data
11 under the new rating schedule. And that is being tested right
12 now and will be rolled out in May.

13 So, what I do is, I gather the experts in my
14 division to meet and discuss what data elements we already have
15 in our WCIS system, in our DEU system, and then what elements do
16 we need, and we go out and develop a plan and go out and get
17 them.

18 And what I would say is, we're not too late. At
19 this point, we have -- fewer than 50 ratings have been completed
20 under the new schedule so far because there's a lag time in
21 injuries. And it takes times for injuries to work themselves
22 through the system.

23 So next week is my -- is my meeting to come up
24 with and finalize the plan.

25 SENATOR BATTIN: And you've had to ramp up your
26 staffing? You've basically created it out of whole cloth.

27 MS. HOCH: Well, I had -- there were people at
28 the division. I got -- when I came on board, I was lucky

1 enough, fortunate enough, to have 300 new positions provided to
2 me to address not just SB 899 but prior reform measures as well.
3 The division had gone through massive budget reductions in the
4 past.

5 Right now, the division has hired 160 new
6 employees. We have promoted over 130 employees in-house, and we
7 are continuing our recruitment efforts, and we're hiring at a
8 rate of approximately 25 new hires a month. And these are
9 quality hires. Part of it, we've had good timing at this point
10 because other state agencies are not in the same position as the
11 division to be able to hire at this point, so we've been able to
12 attract some very, very good candidates.

13 SENATOR BATTIN: Then finally, we had some
14 workers that were up here expressing great frustration. They
15 seemed to be lost in the system, that they don't feel that
16 they're getting adequate information, or that people are helping
17 them or care about their problems.

18 What have you done to help the injured worker in
19 the use of the workers' compensation system to get them through
20 the process?

21 MS. HOCH: I spoke about it a little bit in my
22 opening, which was a few hours ago.

23 I am committed to -- one of my priorities in my
24 hiring was to get the Call Centers staff completely staffed up.
25 We had 50 new positions that we got under SB 899 to handle the
26 increase in complexity of the calls that would come in from
27 anyone, not just injured workers. Anyone can call the Call
28 Center and get assistance in how to process claims in the

1 system.

2 So, we are fully staffed as of January 2005, and
3 we've implemented training for that staff so we have consistent
4 information coming out of the Call Center. We will be
5 transferring all 24 district offices' calls to the Call Center
6 so we have a centralized location for that information, so that
7 it is consistent and accurate.

8 I've also revitalized the injured worker
9 workshops, which had dwindled due to budget cuts and staffing
10 reductions. And we have a training that is scheduled in the
11 near future for all what they call INA officers, Information and
12 Assistance officers, to basically have training on this
13 workshop -- some have never done it -- to have new materials
14 that update the information so that, again, we can provide
15 information to the injured workers to help them navigate the
16 system.

17 SENATOR BATTIN: What are you doing to get that
18 word out?

19 MS. HOCH: We generally will be -- we post that
20 information on our DWC web site. We also will be posting at the
21 district offices themselves about the injured worker workshops
22 because, obviously, most injured workers end up, if they have an
23 injury, come to the district office at some point in time to
24 seek assistance or forms.

25 SENATOR BATTIN: Do the staff there know that it
26 would be advisable to point out to the injured worker that this
27 resource is available to them?

28 MS. HOCH: I'll make sure they do.

1 SENATOR BATTIN: I mean, I think that putting it
2 on the web site is nice, but it doesn't guarantee, and it's
3 something that we should make sure that we get out.

4 MS. HOCH: We plan to make a proactive effort to
5 let people know that they're up and running again.

6 SENATOR BATTIN: Thank you.

7 With that, Mr. Chairman, I'd move Ms. Hoch's
8 confirmation.

9 CHAIRMAN PERATA: We'll take a ten-minute break.

10 [Thereupon a brief recess
11 was taken.]

12 CHAIRMAN PERATA: We will reconvene.

13 Senator Cedillo, would you like to commence?

14 SENATOR CEDILLO: Senator Bowen has done an
15 outstanding job in raising a whole range of questions, so I
16 won't repeat that.

17 But you and I did have the meeting in my office.
18 Do you recall that?

19 MS. HOCH: Yes.

20 SENATOR CEDILLO: You and I had a meeting in my
21 office.

22 MS. HOCH: In February, I believe.

23 SENATOR CEDILLO: Yes, in February.

24 I asked that you meet with the representatives of
25 the union to address the concerns they have raised.

26 Did you do that?

27 MS. HOCH: The concerns that they raised? Any
28 time the union has asked to meet with me, I've met with them.

1 SENATOR CEDILLO: That sounds like a response
2 different from the question I asked you.

3 MS. HOCH: Oh, Okay. I didn't mean to.

4 SENATOR CEDILLO: I understand.

5 My question is this. I asked you to meet with
6 the union subsequent to our meeting to address their concerns
7 that they had raised, and as a precondition, I would say.

8 My question is, did you meet with them
9 subsequently.

10 MS. HOCH: I'm sure I did, but I don't know the
11 exact date. I had meetings with Ms. Wei throughout the
12 processes, and we've talked about issues along the way and all
13 the regulations.

14 SENATOR CEDILLO: I'll ask you one last time.
15 That's okay.

16 MS. HOCH: I think -- was it with regard to --

17 SENATOR CEDILLO: English is only my first
18 language. I'll ask you one last time.

19 I asked you subsequent to our meeting in
20 February --

21 MS. HOCH: Right, right.

22 SENATOR CEDILLO: -- to meet with the unions to
23 address their concerns. Did you do that?

24 MS. HOCH: And what I'm trying to remember is the
25 context of our -- everything we talked about in our meeting,
26 which was kind of -- was long.

27 But I have met with --

28 SENATOR CEDILLO: And my primary concern in our

1 meeting, as I told you, my primary issue and concern was the
2 question of permanent disability. And so my question was, and I
3 said at that time, I asked you to meet with the unions to
4 address their concerns specifically on the area of permanent
5 disability to work out their concerns.

6 MS. HOCH: I have met with representatives of the
7 California Labor Fed, and also Tom Rankin to talk -- I'm sorry,
8 California Labor Fed and also Tom Rankin to talk about those
9 concerns. Yes, we did.

10 SENATOR CEDILLO: Subsequent to our February
11 meeting and the meeting today?

12 MS. HOCH: Subsequent to February, I believe so,
13 yes.

14 SENATOR CEDILLO: Do you know when?

15 MS. HOCH: Pardon?

16 SENATOR CEDILLO: Can you tell me when?

17 MS. HOCH: I'd have to go back and look at my
18 calendar. I don't have that with me, but I can certainly get
19 that back to you and let you know.

20 I can assure you that Ms. Wei and I did have
21 discussions about the PD system and the schedule, and my
22 diminished future earnings capacity adjustment. We did have
23 those discussions, yes.

24 SENATOR CEDILLO: But my questions were, my
25 suggestions were that you would do that subsequent to our
26 meeting. I know that you had them prior to our meeting. I know
27 you've had them within the framework of the process that you've
28 delineated.

1 But that subsequent to our meeting, that I had
2 asked that you would meet with them specifically to address
3 their concerns in this area.

4 MS. HOCH: And I believe I did. And I think the
5 discussions that I was having with labor continued. But I'd
6 have to go back and look at my calendar, because I don't want to
7 misstate when I met with -- with certain people at certain
8 times.

9 I'm not trying to be -- I'm trying to be honest
10 as far as --

11 SENATOR CEDILLO: I want you to. You've been
12 very responsive, and you've had an answer for every inquiry, and
13 you've had it mostly right out of that folder there. So, I'm
14 surprised you don't have your schedule or some record of this.

15 MS. HOCH: No. I didn't bring that with me.

16 But I know when we talked, and I know I was
17 committed to talking with labor and keeping an open dialogue,
18 and that I have done.

19 SENATOR CEDILLO: We've heard a lot today about
20 what people intended. Senator Battin expressed how legislative
21 intent is manifested not just simply in the author of the bill,
22 but what motivates Legislators to vote for legislation, and what
23 motivates signatures from the Governor.

24 Clearly at highest levels of our legislative
25 leadership there seemed to be a consensus that injured workers
26 would not either be placed in peril, suffer as a result of
27 changes in the system. And clearly the Governor has articulated
28 his desire that injured workers would not suffer as a result of

1 changes to the system.

2 I take the Governor at his word.

3 And yet today, we had testimony lauding the
4 system from the business community. There was a tremendous need
5 and desire. Senator Bowen has articulated that all of us were
6 concerned. Rates were high, benefits were low under the
7 previous system. The delay in workers getting back to work.

8 In the current system what we heard today is that
9 some members of the business community are pleased with the
10 reforms that we made.

11 But not one worker came to testify that they have
12 benefitted from the changes in the system, that they had
13 returned to work quicker from the system, that their benefits
14 were improved.

15 Does that concern you?

16 MS. HOCH: Well, part -- it always concerns me
17 when an injured worker testifies and has expressed frustration
18 with the system because that means I need to do something more
19 with the system.

20 But I would need more facts on each injured
21 worker. It sounds like some of the dates of injuries were quite
22 -- were pre-dated SB 899. So, for existence, if the injury pre-
23 dated SB 899, you wouldn't have the immediate medical care
24 available to you, up to \$10,000, because that was a new revision
25 put into the law.

26 So, some of the changes that were implemented or
27 made in SB 899, it sounded like may not have applied to those
28 injured workers who testified here today, but I don't know that

1 for a fact.

2 SENATOR CEDILLO: Right. Now, in fact, it was
3 quite evident. Senator Battin asked that they state their date
4 of injury. Since it obviously occurred before 899, that would
5 not apply.

6 But that still raises the question, there was not
7 a worker who came who -- somebody got injured post-899.
8 Arguably, we heard the business community assert that workers
9 got more benefits and that the system was better, but there
10 wasn't a worker that came back and said, "You know, in the past
11 I would have had to wait. In the past, I couldn't have returned
12 to work but now I'm here. I had benefits immediately. It
13 prevented my injury from getting worse, and I returned to work
14 quicker."

15 Does that concern you?

16 MS. HOCH: It doesn't concern me in the way that
17 I'm not -- the employers who were here, and the businesses who
18 testified said that was occurring, and that their workers were
19 receiving more quality -- higher quality medical care and
20 returning to work. So, the employers were talking about that.

21 I also, I look at -- so, I think that issue was
22 covered with the employers and the businesses.

23 As far as who came to testify here today, I
24 didn't have any role in that, except for me showing up, of
25 course.

26 I think it's happening out there, but oftentimes
27 I don't know whether we necessarily would hear about everything
28 good and bad that's happening in a hearing like this.

1 SENATOR CEDILLO: What strategies do you have to
2 know that? How will we know?

3 Some employers came and said, "Everything's
4 great."

5 Now I, like Senator Bowen, every weekend
6 experience from small businesses the lament that things are not
7 great. This weekend I heard that rates continue to go up
8 without any incidence of injury at the workplace. I hear it
9 from small businesses that they have yet to realize the
10 benefit.

11 But we heard from employers today that things
12 were really -- things were in crisis. There was a need for
13 change, consensus on that.

14 Change took place, and people were -- they were
15 pleased with the change, and that that workers benefitted.

16 This is a system designed for injured workers,
17 ergo the name.

18 What strategies, what programs, how are we going
19 to know that injured workers are benefitting from the change in
20 the system?

21 We have some anecdotal evidence that they are
22 not, and in fact that they are receiving less benefits. This
23 was a design, and there was a legislative intent and commitment
24 that they would not suffer.

25 How will we know that they are not? What are
26 your strategies, what are your plans to ascertain that?

27 MS. HOCH: Part of that is gathering information.
28 Part of that is looking at the complaints that the division

1 receives.

2 If the complaints go down, one would hope that
3 that could be an indication that things are getting better.

4 So, that's something that I plan to put in place
5 as far as looking at complaints that we get, tracking those
6 complaints.

7 And if the complaints are sufficient to trigger a
8 target audit, that might be something that happens.

9 I actually should also say, putting out the word,
10 education on the web site, that there are avenues for injured
11 workers to submit claims.

12 SENATOR CEDILLO: Thank you. I'm done with
13 questioning.

14 I share Senator Bowen's concerns that, while much
15 argument will be made that we have a fair system in place, and
16 that we've improved the system, I remain profoundly disturbed
17 that the results as they relate to injured workers are not
18 reflective of that.

19 CHAIRMAN PERATA: Thank you.

20 Senator Ashburn.

21 SENATOR ASHBURN: Thank you, Mr. President.

22 Thank you for your willingness to submit yourself
23 to the inquiries.

24 Let me first ask you about your work in the
25 Attorney General's Office.

26 MS. HOCH: Okay.

27 SENATOR ASHBURN: You were the lead on the
28 Tobacco Litigation Section.

1 MS. HOCH: I was one of the leads in charge of
2 the litigation, yes.

3 SENATOR ASHBURN: And you were a lead or the lead
4 on the Energy Task Force in the Attorney General's Office.

5 MS. HOCH: Yes.

6 SENATOR ASHBURN: And during the course of those
7 endeavors, with which you were intimately involved as a
8 leadership person, were you personally in agreement with the
9 law, with the policy, that was being pursued?

10 Let me just ask it that way. At every instance
11 in your role in the Attorney General's Office in the pursuit of
12 the tobacco settlement, and in pursuit of the actions that were
13 followed by the Attorney General related to the energy crisis,
14 did you personally agree?

15 MS. HOCH: With the tobacco litigation, each of
16 these was a different animal. I'm going to back up a little
17 bit.

18 My job in the Attorney General's Office in
19 providing leadership and being chosen to direct a team, to
20 manage a team, whether it was the tobacco litigation, whether it
21 was the Energy Crisis Team, my role was providing advice to my
22 client. I always had a client. That client sometimes was the
23 Attorney General, that client sometimes was the Governor's
24 Office, sometimes the Secretary of State; some state agencies.

25 So, my job in my positions was to advise the
26 client and represent the client, and pursue the client's goals
27 through the legal process.

28 SENATOR ASHBURN: And in giving that advice or in

1 providing that leadership, what do you use as your standard?

2 MS. HOCH: What do I use as my standard?

3 SENATOR ASHBURN: What do you rely upon as your
4 standard in giving the advice or taking the actions in leading
5 the charge? And those were two very high profile activities
6 with which this Attorney General or the State of California was
7 involved.

8 MS. HOCH: What I go by is the law. I basically
9 follow the law. I look at the statutes. I look at the
10 Constitution, and I work within those parameters on the advice I
11 give and the role I take in whatever I do to pursue their
12 ultimate goal.

13 SENATOR ASHBURN: Is there anything different in
14 what you are doing now as the Director of the workers' comp
15 division that varies from the way in which you've approached
16 your work in the Attorney General's Office in other high profile
17 activities?

18 MS. HOCH: No. I would say the approach is the
19 same. The one difference is, I'm not the one in court
20 representing the client.

21 But I'm engaged in the teamwork, in looking at
22 the law, doing the legal analysis, and making decisions based on
23 the law and moving forward.

24 SENATOR ASHBURN: Are you convinced that the
25 actions that you have taken, the regulations that you have
26 overseen, that they are in every instance consistent with the
27 law?

28 MS. HOCH: Yes, otherwise I wouldn't take those

1 actions.

2 SENATOR ASHBURN: We heard from a number of
3 workers today. And I, as one Member of the Committee, am
4 extremely sympathetic to the personal circumstance involving
5 anyone who might have been injured on their job.

6 Worker number one -- I'm going to refer to these
7 in the order in which they appeared -- the injury occurred in
8 1999.

9 Is there anything that you have done that has in
10 any way affected that worker's case?

11 MS. HOCH: The only thing -- I don't know the
12 case in detail, so I'm making an educated guess, is that if that
13 worker had an award, nothing I've done, but the law has changed.
14 If that person had an award that had future medicals in it,
15 those future medicals, the treatment being provided under that
16 future medical award would now be measured by evidence-based
17 guidelines and a utilization review process.

18 So, that was a change that was enacted by the
19 statutes.

20 SENATOR ASHBURN: And similarly with the other
21 individuals, a 2002 injury, 2001-and-a-half injury, a February
22 1999 injury, a December 2000 hearing, March 2003.

23 MS. HOCH: If they all had a PD award under the
24 old system, that award will remain in place. The new schedule
25 would not apply to a previous permanent disability award.

26 SENATOR ASHBURN: I think that's the point that
27 I'm asking about, is that these seem to have been fully
28 adjudicated.

1 MS. HOCH: My guess is that if we had an injury,
2 a date of injury for 1999, it would be fully adjudicated, and
3 there would be an award in that case. But I couldn't tell from
4 the testimony of each of these injured workers what the actual
5 status of their case was. But if they had a resolution and an
6 award in their cases, then that award remains in place and the
7 new schedule does not apply to that award.

8 SENATOR ASHBURN: The new schedule does not
9 apply.

10 MS. HOCH: Right.

11 SENATOR ASHBURN: Just very briefly on the
12 subject of the advisory committees. Are you required by statute
13 to have advisory committees?

14 MS. HOCH: No. It's something that was
15 apparently used in some of the -- in the past, but I think I've
16 added new meaning to the advisory groups. And what I've heard
17 from some of the participants is that it was -- it was unusual
18 in the past for the AD to attend each advisory group and engage
19 in the discussions. I find it very useful.

20 SENATOR ASHBURN: Has there ever been a case
21 where someone requested participation in an advisory committee
22 that they've been denied?

23 MS. HOCH: No, not by me.

24 SENATOR ASHBURN: Is there anything that you
25 heard here today from people who identified themselves as
26 interested parties, is there anything here that would have been
27 barred from consideration at an advisory committee if they had
28 used that venue to make their point, in addition to what they

1 did today?

2 MS. HOCH: No. And some of the speakers today
3 actually have participated in the advisory groups and have made
4 those points in the advisory groups, and were in the process of
5 working through the regulations.

6 SENATOR ASHBURN: I think you've already made the
7 point that not all of the discussions of advisory committee
8 deliberations have you agreed with. Is that --

9 MS. HOCH: I would say that there's always in
10 these advisory groups, there has always been -- I don't use
11 always very often -- a difference of opinion expressed by the
12 various members of the group. So what happens is, there isn't a
13 consensus. Or there might be a consensus sometimes in concept,
14 but then when you get to how to actually implement that concept,
15 there will be a difference of opinion of how best to do that.

16 So, I would say the advisory groups are quite
17 dynamic in that sense.

18 SENATOR ASHBURN: The reason that I brought up
19 your service in the Attorney General's Office as a team member
20 or leader on the tobacco litigation and on the Energy Task Force
21 is that you've worked for Republican attorney generals and
22 you've worked for Democrat attorney generals.

23 And in the things that you have done in the past,
24 I just want you to know, I've personally disagreed with what the
25 state has done.

26 You're here today for confirmation based on your
27 qualifications, not whether I agree or disagree with the policy
28 or the law. And you answered that the standard that you follow

1 in your work before and your work now is to follow the law.

2 So I personally disagree with what you did, but
3 you said you followed the law.

4 And now we have workers' compensation, and even
5 though, I guess maybe even you might disagree, your standard is
6 going to be to follow the law.

7 I think that's the standard that we ought to be
8 following.

9 It also during the course of the of hearing, it's
10 been interesting that, and I really commend especially Senator
11 Bowen for the intricacy of the conversation, because I think it
12 has brought out your skill and your knowledge of the law. I
13 mean, I was especially fascinated by the discussion of the
14 development of emergency regulations under AOL.

15 SENATOR BOWEN: You need a life.

16 [Laughter.]

17 SENATOR ASHBURN: True enough.

18 But if we didn't have an emergency in workers'
19 compensation that would warrant emergency regulations, I don't
20 know what qualifies as an emergency, because this state was in
21 deep, deep trouble with workers' compensation.

22 You've been criticized today for going too fast,
23 and you've been criticized for going too slow.

24 The one thing that has been very apparent, and in
25 looking not just to your current activity, but to your life of
26 service, is that you follow the law. I don't think we can ask
27 anything more of anyone. I think you're extraordinarily
28 competent, and I intend to vote for you.

1 CHAIRMAN PERATA: That having been said, I'm
2 going to talk to you as long as I can. It should be a very
3 brief conversation.

4 This is longest hearing that we've had this
5 year.

6 First of all, I want to ask you if anything
7 you've heard today gives you pause about adopting the permanent
8 regulations in the next few days?

9 MS. HOCH: Nothing today, I would say, because a
10 lot of comments made today were similar to comments -- some of
11 the same people testified at a public hearing on the permanent
12 disability regulations. So, I've reviewed the comments and
13 have gone through them with my team and considered them.

14 CHAIRMAN PERATA: Directly I'll tell you what is
15 troubling and perplexing, and perhaps you only have, as you
16 said, 50 or so cases.

17 MS. HOCH: So far. I should say those are cases
18 that are rated but there's no actual award yet.

19 CHAIRMAN PERATA: Yes.

20 You heard the young actress, and she was knocked
21 down from 59 to 23, and Mr. Balestrieri said that he went down
22 from 57 to 30, which is a 61 percent decrease.

23 I've become aware in the last couple of days of a
24 police officer who's lost the use of his legs in the line of
25 duty, and he is facing quite a substantial, substantial loss as
26 well.

27 So, all this discussion really boils down to the
28 permanent disability issue. It's a very complex system and a

1 very troubled system. And I think as time goes on, hopefully,
2 you'll use your enforcement powers to prevail upon some, both
3 insurers and insured, who probably are ripping the system off.

4 However, as has been said by many, this wasn't
5 what anybody signed up to do. That's just unequivocally the
6 case.

7 The Governor in an interview last year said that
8 workers getting injured on the job, and this is a quote from the
9 AP:

10 "Workers getting injured on the
11 job will have better benefits
12 here, and that workers ripping
13 off the system will get no
14 benefits."

15 Unquote.

16 But from the testimony today, it would appear to
17 me, and some of the discussions that I've had in the last couple
18 of weeks, that one, the law is not being implemented consistent
19 with what particularly the negotiators of this legislation
20 believed was the case. And, you know, both John Burton, who has
21 testified at that same hearing that you just cited, and Speaker
22 Nunez as recently as last week in a conversation with the
23 Governor said that we never -- no one ever said, nor did we
24 believe, that injured workers permanently disabled would be
25 effected.

26 Now, the claims experience is thin. I'll grant
27 you that. It's only been so many months.

28 But as each case goes by, the evidence mounts,

1 and it's very compelling, that we really have zeroed in on the
2 most vulnerable population, and that's the disabled. And, you
3 know, we didn't sign up for that. That wasn't the deal. You
4 weren't there. I mean, you're just collateral damage right now,
5 sorry. This is in front of your parents.

6 But frankly, there is nobody, and I even believe
7 some Republicans but certainly no Democrats would ever agree to
8 that deal. And I don't think that the Governor had an idea that
9 this was going to come down.

10 But he's made it very clear to me that this is
11 his responsibility. You're implementing at his direction.

12 So, I believe the responsibility for changing
13 this unanticipated consequence, and I'm mean no disrespect,
14 really rests with him. You're merely a functionary in that
15 process.

16 And last week, the Governor said at a news
17 conference on an unrelated matter, he had said, "I am the first
18 one always to come out and say this didn't work," and then he
19 put forward another proposal.

20 I understand that today he has made a similar
21 claim on redistricting, that he did not feel that the time was
22 now or opportune to go forward with his desire to have mid-term
23 redistricting.

24 In the first instance, he said when we work
25 together and join forces to solve problems, anything is
26 possible. And so, we're going to.

27 I really can't believe that the same Governor who
28 reversed his position on in-home supportive services last year,

1 who has singled out persons with disabilities, families with
2 autism, has singled them out for exclusion in any budget cut
3 this year, I can't believe that he would have knowingly entered
4 into any agreement where the same kind of person was going to be
5 further injured.

6 And he said, and this is a quote as well, "This
7 system that we were embarking upon will save jobs, reduce costs
8 to our employers, and improve care for injured workers."

9 Well, it's pretty clear that, in sum, we don't
10 have that system. Premium savings so far may not be entirely as
11 a consequence of what's happened to the permanently disabled,
12 but in a confusing system, this just jumps out as looking like
13 some of these savings are being sponsored by people who can
14 afford it least.

15 Speaker Nunez and I have discussed with the
16 Governor, and we are going, upon his agreement, we are going to
17 present him with a summary of what we've heard, not here today,
18 but things that we've engaged in, as well as the understanding
19 of Speaker Nunez, who was in the meetings last year, and then
20 we're going to meet face-to-face to determine why what everybody
21 thought wasn't part of the deal has become part of the deal.
22 And why is it that permanently disabled are being effected.

23 I want to remind everybody that we have a number
24 of other avenues to redress what we consider to be a failure in
25 the regulation of a law. They include legislation and also
26 budgetary review.

27 So, we are going to pursue all remedies available
28 to us.

1 Specifically, I want it clear that I don't
2 believe the job's done. I think we missed a big piece. And I
3 think it ought to be fixed. I think it ought to be fixed this
4 year.

5 This is enough experience for me to sit down and
6 say how we're going to do it. You're going to be a party to
7 that because you're going to have the job. So, I would expect
8 that no conversation ultimately with the Governor on this
9 subject will not engage you personally, because I want to hear
10 from you how we are going to arrive at a point that we're not at
11 now, but we fully intended to be.

12 So, it's with that understanding that I'm going
13 to send you to the full Senate. But this year will not end
14 until this problem is solved.

15 I ask you, and fully expect you to be a complete
16 partner in that. I think you've acquitted yourself well here
17 today, but I don't think this is all about you. I think it's
18 about the man you work for.

19 And when I have a problem, when my staff isn't
20 doing what I consider or someone else considers to be the best
21 thing, the buck stops with me. The Governor made it clear it
22 stops with him.

23 I would like to give you an opportunity to close,
24 because I can't talk any more.

25 MS. HOCH: Well, I would say I look forward,
26 Senator, I look forward to working with you.

27 Opportunity to close.

28 CHAIRMAN PERATA: That's a good close.

1 MS. HOCH: Okay, and actually if confirmed, I
2 will work with the Legislature, staffers, the Governor's Office,
3 to implement the reform measures in a fair, efficient, and
4 deliberative process.

5 How's that?

6 CHAIRMAN PERATA: That's fine. I just want to
7 assure you that this one will not be with staffers. This is
8 going to be right up with the big boys.

9 MS. HOCH: I'm happy to work with anyone.

10 CHAIRMAN PERATA: This is not to going to be
11 staffed out. This is of sufficient consequence.

12 One of the major things that the Governor's done
13 in his brief career as governor has been workers' comp. So,
14 we're going to go back, and we're going to get it right.

15 I know Senator Cedillo had to go present a bill.
16 He wanted to be recorded as a No vote. I'll leave the roll
17 open.

18 Call the roll, please.

19 SECRETARY WEBB: Ashburn.

20 SENATOR ASHBURN: Aye.

21 SECRETARY WEBB: Ashburn Aye. Bowen.

22 SENATOR BOWEN: No.

23 SECRETARY WEBB: Bowen No. Cedillo. Battin.

24 SENATOR BATTIN: Aye.

25 SECRETARY WEBB: Battin Aye. Perata.

26 CHAIRMAN PERATA: Aye.

27 SECRETARY WEBB: Perata Aye. Three to one.

28 CHAIRMAN PERATA: The roll will stay open.

1 Thank you.

2 MS. HOCH: Thank you very much.

3 [Thereafter, SENATOR CEDILLO
4 voted No, making the final
5 vote 3-2 for confirmation.]

6 [Thereupon this portion of the
7 Senate Rules Committee hearing
8 was terminated at approximately
9 5:40 P.M.]

10 --ooOoo--
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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

5th day of May, 2005.


EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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Andrea Lynn Hoch
Administrative Director
Division of Workers' Compensation

Senate Rules Committee Questions and Responses

February 16, 2005

Goals for Division of Workers' Compensation

1. *What do you hope to accomplish during your tenure as director of the Division of Workers' Compensation? What goals do you have for the department and how will you accomplish them?*

The Legislature passed and the Governor approved SB 899 before my appointment as Administrative Director (AD). My goal is to implement the provisions of SB 899 (and previous workers' compensation reform legislation) in a fair, deliberative and timely manner.

As AD, I am committed to creating an open and effective opportunity for all stakeholders in the workers' compensation community to provide input, comments and suggestions to the Division during the regulatory process. For each regulation project, I create an advisory group to discuss proposals. The advisory groups include representatives from diverse interests, including business, labor, insurers, medical providers, medical specialty societies, applicant attorneys, defense attorneys, and claims administrators. After carefully reviewing the testimony and comments provided to the Division during the comment period, I make informed decisions. Although it is unrealistic that everyone will agree with my decisions, I give all a meaningful opportunity to provide their thoughts and comments to me during the decision-making process. On several occasions, I revised draft regulations based on comments received from the different workers' compensation groups; I have never adopted any group's suggestions on a wholesale basis.

My primary goals for the Division are: make the Division a professional, competent and respected organization that produces high-quality work, meets deadlines, provides information and assistance to the users of the workers' compensation system, and resolves claims in an effective, efficient, and consistent manner.

These goals will be accomplished by: (1) creating a team environment where members of the various units within the Division work together; (2) improving the efficiency and effectiveness of the Division's work by prioritizing work and establishing an internal review process; (3) establishing a culture of accountability where work expectations are clear and individuals are recognized for outstanding work and informed when their work is not meeting expectations; (4) hiring new staff that have the skill sets and potential to become productive and contributing members

of the Division; (5) improving the Division's web site, call center and Information and Assistance Unit to provide up-to-date, user-friendly information to the public about the workers' compensation system and the regulatory process; (6) developing and implementing a statewide electronic database system for the workers' compensation court system to improve the efficiency of processing and resolving workers' compensation claims; and (7) conducting annual statewide training for all Division employees.

As a manager, I lead by example and make decisions in a fair and timely manner. I gain the respect and loyalty of my staff by working hard and rolling up my sleeves with staff, asking questions and exploring new ways to improve and streamline the Division's operations. My openness to change, combined with the ability to make informed and timely decisions, encourages others to think creatively and find ways to improve and streamline the operation of the Division. This results in providing the best service possible for the users of the workers' compensation system.

Emergency Permanent Disability Regulations

1. *How did you arrive at your decision to interpret "diminished future earning capacity" as a numerical formula and how did you choose the particular formula (1.1 – 1.4) contained in the emergency regulations?*

The methodology and diminished future earning capacity (DFEC) adjustment table is based on a numeric formula based on the RAND data. Based on the empirical data in RAND's December 2003 interim report, 22 different body injury categories were identified using 100 observations as a threshold. These 22 injury categories were ranked based on a ratio of the standard rating over proportional wage loss. I adopted the assumption that the relativities between injury categories under the 1997 schedule would be the same under the 2005 schedule. I also made a policy decision that the DFEC adjustment could only be adjusted upward and adopted a baseline injury category that would provide for a positive DFEC adjustment factor.

This results in these body injury categories being placed in different ranges (based on the ratio of standard ratings to wage losses). Each of these ranges generates a DFEC adjustment between 10% and 40% for each body injury category. The 10% to 40% range is based on the fact that the highest ratio (1.81) is approximately four times the lowest ratio (.45).

A summary of the methodology follows:

- RAND data was used to establish a ratio of California standard ratings over wage losses for 22 body injury categories.
- Ratio Range of between .45 to 1.81; divide these ratios into 8 evenly spaced ranges. Each body injury category will fall within one of these 8 ranges, based on its ratings/wage losses ratio. Eight categories were used

because it allows DWC to easily divide ranges for a 20% rating, which is a common rating.

- Establish a range of DFEC adjustments based on the difference between .45 and 1.81. The lowest range is a 10% DFEC adjustment to the AMA whole person impairment rating. The 10% DFEC adjustment reflects my commitment to give every rating a positive (upward) adjustment.
- AMA whole person impairment ratings with greater loss of earnings capacity will receive a higher DFEC adjustment, up to a maximum of 40%. The 40% maximum is based on the fact that the ratio of 1.81 (lowest wage loss relative to standard rating) is four times greater than the ratio of .45 (highest wage loss relative to standard rating).

2. *How did you use the 2003 RAND report as the basis for your interpretation of "diminished future earning capacity"? Did you base your interpretation on any other empirical studies? If you did, please cite them.*

The entire basis of the DFEC adjustment is the RAND study, as required by SB 899. The RAND data provided the Division with the relative values of wage losses that were the foundation of the "numeric formula," as mandated in the legislation. A December 2004 RAND report detailed how the empirical data in its interim report was used to formulate the DFEC adjustment for the 2005 schedule. ("Data for Adjusting Disability Ratings to Reflect Diminished Future Earnings and Capacity in Compliance with SB 899," WR-214-ICJ, December 2004.)

The wage loss data in the RAND report is the best available data; no other empirical data was found to supplement RAND empirical data. In its December 2004 report, RAND concludes that "without any additional data that would allow a closer comparison between the earnings losses in the RAND data with AMA Guides ratings, the data here provide the best means with which to adjust disability ratings to reflect the long-term loss of earnings capacity by injured workers." (RAND December 2004 Report, p. 15.)

Currently, I am working with RAND to develop an approach for long-term data collection on medical conditions and earnings loss. RAND will be providing recommendations on what data needs to be collected and how best to collect this data so that additional empirical data will be available during the next 5 years for the subsequent schedule revision. As AD, I am committed to gathering and analyzing this data so the next schedule revision is based on empirical data after 2005. If the empirical data supports a revision before the 5-year mark, I will take the necessary regulatory steps to revise the schedule as appropriate.

3. *Have you or anyone you've consulted estimated the reduction in permanent disability benefits that will result from the new permanent disability schedule? If so, what is your understanding of the size of the reduction?*

SB 899 in total, including the revision of the permanent disability rating schedule, brings objectivity to the system while reducing costs. The American Medical Association's Guides (AMA Guides) for impairment will bring uniformity, clarity, and objectivity to the permanent disability (PD) rating system. This approach is consistent with forty-two other states that base their PD system on the AMA Guides. In addition, California is the only state which has a PD rating schedule that provides the additional benefits of factoring in an employee's age, occupation and diminished future earning capacity.

The 1997 schedule rewarded less serious work-related injuries with higher disability ratings based on over-reliance on subjective factors and work restrictions, resulting in disability ratings that did not accurately reflect the employee's disability and ability to return to work. The 2005 schedule will evaluate work-related injuries based on objective medical evidence which will result in more accurate disability ratings that reflect the employee's true disability and ability to return to work while promoting consistency, uniformity, and objectivity. The truly injured employee will receive a disability rating under the 2005 schedule, while an employee whose injury is based solely on subjective factors, with no objective findings by the physicians, will not receive a disability rating under the 2005 schedule.

SB 899 specifically provides a significant increase in benefits to those whose injury is rated in the top 30% of the permanent disability schedule. In addition, benefit payments are significantly higher than they were a few years ago. Using the Benefit Simulation Model developed at UC Berkeley, benefit changes legislated in 2002 (AB 749) increase the average permanent partial disability benefits over 2002 levels by 41.4% by 2006.

It is impossible to accurately predict the cost savings under the new schedule because: (1) the 1997 schedule and 2005 schedule are based on completely different methodologies; (2) over-reliance on subjective factors and work restrictions in the 1997 schedule produced inflated disability ratings that do not accurately reflect an employee's objective medical condition; and (3) the 1997 schedule results in a wide range of disability ratings for similar types of injuries based on doctor's and rater's application of the subjective factors and work restrictions, thereby making any meaningful comparison between the two schedules impossible.

4. *You testified in December that you would look at a number of specific examples of ratings under the new schedule to see what effects it has on the permanent disability benefits in particular cases. Have you started doing this? What are your preliminary findings?*

It is difficult to accurately compare ratings under the 1997 and 2005 schedules based on a report that is prepared under only one of the schedules. Because subjective factors and work restrictions dominated the PD landscape under the 1997 schedule, a report prepared under the 1997 schedule will not have enough objective medical information to accurately rate the injury or condition under the 2005 schedule. Conversely, it would be difficult to construct a 1997 schedule rating from a report prepared under the 2005 schedule because such a report would not contain a ratable description of a subjective impairment or a discussion of subjective factors and work restrictions. Therefore, rating comparisons based on a report prepared under the 1997 schedule are problematic due to the dramatic differences between the two schedules and the lack of detailed information describing the objective medical condition(s) using the AMA Guides.

DWC is working with the Workers Compensation Insurance Rating Bureau (WCIRB) in a study to estimate the cost savings under the new schedule. The Division is providing samples of ratings under the 1997 schedule and WCIRB has contracted with an expert to rate these samples under the 2005 schedule.

Additionally, the Division is collecting all reports that include ratings under the 1997 and 2005 schedules so it can review reports that include the necessary information to perform an accurate rating under both schedules.

During the 120-day rulemaking process to adopt permanent PD regulations, members of the workers' compensation community will have the opportunity to provide examples of ratings under the 2005 schedule and comments about the effect of this rating on the permanent disability benefits.

5. *Have you asked RAND to modify their data so it can serve as a foundation for permanent regulations? If the answer is yes, when do you anticipate receipt of the new data and can you commit to incorporate it in the permanent regulations? If the answer is no, why haven't you asked them to do this work?*

The rulemaking process provides a 120-day period from the effective date of emergency regulations to adopt permanent regulations. RAND has not been asked to modify their data because all of the empirical data from the December 2003 interim report has already been considered in formulating the diminished future earning capacity adjustment. ("Data for Adjusting Disability Ratings to Reflect Diminished Future Earnings and Capacity in Compliance with SB 899," WR-214-ICJ, December 2004.)

I believe that it is important to implement the 2005 schedule on time and gather data on an on-going basis so the Division has empirical data that reflects real world experience. I continue to work with RAND to develop a plan to collect the necessary data to provide empirical studies for future revisions of the permanent disability rating schedule

The law requires the PD schedule be reviewed at least every five years. I believe review and evaluation after the new regulation is in place will be especially important to ensure that the schedule provides ratings that more accurately measure an employee's disability and ability to return to work.

Treatment Guidelines

1. *What is the status of SB 228 regulations? Why were they delayed and when do you anticipate their release?*

SB 228 requires, on or before December 1, 2004, the AD, in consultation with the Commission on Health and Safety and Workers' Compensation (CHSWC), to adopt, after public hearings, "a medical treatment utilization schedule that shall incorporate the evidence-based, peer-reviewed, nationally recognized standards of care . . . and that shall address, at a minimum, the frequency, duration, intensity, and appropriateness of all treatment procedures and modalities commonly performed in workers' compensation cases." Until the adoption of medical treatment utilization guidelines by the AD, the American College of Occupational and Environmental Medicine (ACOEM) guidelines are in effect and presumptively correct on the issue of extent and scope of medical treatment.

At its November 15, 2004 public meeting, CHSWC adopted the RAND Report and issued recommendations for adoption of medical treatment utilization guidelines.

The timing of the RAND report and CHSWC public meeting presented a challenge to DWC's ability to meet the statutory deadline and the statute's requirement that a public hearing be held before regulations can be adopted. DWC is committed to providing the public with time to review and digest the report so the public can provide informed and thoughtful comments to the Division at a public hearing. A public hearing was held on December 6, 2004.

The medical treatment utilization regulations are a high priority for the Division. During the December 6, 2004 public hearing, DWC received testimony and written comments on the recommendations contained in the RAND Report and CHSWC's recommendations. Upon review of the testimony and written comments, the Division began drafting proposed regulations and established an advisory group to provide additional input. The first advisory group meeting is scheduled for March 8, 2005. After this meeting, DWC will review the comments and revise the draft regulations, as necessary. DWC will post these draft regulations on the web site to obtain additional public comment. Once this process is completed, DWC will submit the

proposed regulations to the Office of Administrative Law (OAL) to commence the permanent rulemaking process. This process includes a 45-day comment period, public hearing, and subsequent 15-day comment periods whenever substantive changes are made to the proposed regulations. Upon completion of this process, the permanent regulations must be approved by OAL.

2. *Do you now monitor the use of the ACOEM guidelines by insurers and employers? Have you found evidence suggesting that such anecdotal reports are true?*

It is not possible to accurately and effectively monitor the use of ACOEM guidelines by insurers and employers since each determination is made on a case-by-case basis. Like others in the workers' compensation community, I have heard stories about an injured employee who was denied authorization for medical treatment that he or she believes is medically necessary and appropriate. To date, I am unaware of any data showing a pattern or practice of unreasonable denials of medical treatment under ACOEM. The number of expedited hearings does not indicate an increase in the number of medical disputes.

The Division is in the process of drafting penalty assessment regulations for violations of the utilization review (UR) regulations and Labor Code section 5814.6 (authorizes up to \$400,000 penalty for general business practice of unreasonable delays or refusals to pay benefits). Any complaints alleging unreasonable denials or delays in the UR process or misapplication of the ACOEM guidelines are being forwarded to the DWC Audit Unit to determine whether the complaints are sufficient to trigger a target audit.

3. *How should insurers and employers be interpreting relative silence of the ACOEM guidelines on chronic conditions, acupuncture, use of medical devices, home health care, durable medical equipment and toxicology?*

The ACOEM guidelines, particularly Chapter 6, contain guiding principles that address many chronic conditions. An example is that therapy should lead to functional improvement, rather than just symptom control. Additionally, the guidelines for procedures such as surgery usually are the same at three months and three years.

ACOEM does include the use of some devices and durable medical equipment such as the TENS unit and splints. However, not all conditions, diagnostic procedures or treatments are included. Some treatments are either too new or not prevalent enough to be included in ACOEM, such as toxicological emergencies. The list of chemicals and potential effects are far too numerous to be included in an occupational guideline. Most poison control centers use a computer-based system that is updated regularly, highly specialized, and accurate.

One should not assume that just because a diagnostic service or treatment is not covered in the ACOEM guidelines that it will be denied. The Legislature anticipated

that no guideline could ever cover all the issues that arise. In these situations, Labor Code section 4604.5(g) provides that the treatment shall be in accordance with other evidence-based medical treatment guidelines generally recognized by the medical community.

4. *What are you doing between now and the adoption of the SB 228 regulations to insure that gaps in the ACOEM treatment guidelines are not keeping injured workers from needed medical care?*

This question touches upon two issues: (1) denial of treatment that is not covered under ACOEM; and (2) delays in the UR process.

Labor Code section 4604.5(e) provides for injuries not covered by the ACOEM treatment guidelines (or utilization schedule adopted by the AD pursuant to Labor Code section 5307.27), authorized treatment shall be in accordance with other evidence-based medical treatment guidelines that are scientifically based and generally recognized by the national medical community. This statutory provision is effective now and does not require implementing regulations. If a requested treatment is not covered under ACOEM, then the medical provider needs to justify the requested treatment using other evidence-based medical treatment guidelines.

In response to letters and questions from injured employees, the Division is informing them that they can request an expedited hearing before a workers' compensation administrative law judge to resolve the medical treatment dispute. I have also encouraged injured employees and medical providers to forward their complaints to the DWC Audit Unit for review and a determination whether the complaints are sufficient to trigger a target audit.

With regard to alleged delays in the UR process, I adopted emergency UR regulations establishing the process for conducting utilization review, including time lines, qualifications of medical professionals making UR decisions, and required information that must accompany a denial or modification of requested medical treatment.

A recent en banc decision of the Workers' Compensation Appeals Board (WCAB) provided additional incentive for timely UR decisions by holding that: (1) the UR review time deadlines in Labor Code section 4610(g)(1) are mandatory; (2) an employer or insurer is precluded from using the UR process if the mandatory deadlines are not met; and (3) an untimely utilization review report is inadmissible evidence with respect to the particular medical treatment dispute in question. (*Brice Sandhagen v. Cox & Cox Construction, Inc.*, RDG 115958, November 16, 2004.)

Medical Provider Networks

1. *How did you arrive at your view that SB 899 allows employers to use medical provider networks for date of injury cases that precede the enactment date of the bill?*

Section 47 of SB 899 provides that all changes are prospective from the date of enactment regardless of date of injury, unless otherwise specified. This language supports the intent that the medical provider network (MPN) statutory provisions are to apply prospectively regardless of date of injury and pre-existing claims may be transferred into an approved MPN.

Statutory change requiring that employees currently undergoing medical treatment for a work-related injury be placed into a newly approved MPN is procedural and may be applied to pending cases even if the injury occurred before the statute was effective. The statutory change does not substantially affect existing rights and obligations because the injured employee will still be able to choose his or her physician from among the network of physicians. Proposed regulations also contain safeguards to maintain the doctor-patient relationship and ongoing care in specific cases (acute condition, serious chronic condition, terminal illness, scheduled surgery).

2. *What is your division doing to ensure continuity in the course of treatment being received by injured workers who are forced to change medical providers? Please outline any continuity of care provisions that you believe must be followed and tell us how you plan to enforce them.*

I am unaware of any cases where an injured employee with a pre-existing work-related injury has been required to choose a new medical provider within the MPN.

If the employer or insurer chooses to transfer on-going care to a MPN, section 9767.9 of the regulations set forth the criteria for transferring on-going care to a MPN. It is important to note that this provision is optional. An employer or insurer can decide that medical care for employees with pre-existing claims will not be transferred to a MPN.

Section 9767.9 provides that the insurer or employer shall provide for the completion of treatment for injured employees who are being treated outside of the MPN for a work-related injury that occurred prior to the coverage of the MPN unless (1) the injured employees has pre-designated a physician under Labor Code section 4600(d) or (2) one of four specific conditions exist. Specifically, transfer of on-going care is not permitted if the employee has an acute condition, a serious chronic condition, a terminal illness, or an authorized scheduled surgery.

Section 9767.9 provides for a dispute resolution procedure to resolve any disagreement whether an employee falls within one of these four conditions. Further,

section 9767.9 states that an insurer or employer shall not be precluded from agreeing to provide medical care with providers outside of a MPN.

As part of the application process, a MPN applicant must include a copy of the written transfer of care policy and written continuity of care policy. During the application process, these written policies are reviewed to ensure that the provisions are consistent with the statute and regulations. If the AD determines that a MPN is not following its written transfer of care policy or written continuity of care policy, section 9767.14 of the regulations authorize the AD to suspend or revoke a MPN plan.

3. *Another criticism of the managed [medical] provider network regulations is that they don't set standards for approval or disapproval – they don't say, for example, how many doctors need to be in a network. What standards will you use in assessing the adequacy of a managed [medical] provider network? Among other issues, how will you determine if there are a sufficient number of physicians in a network, what constitutes an adequate number of specialists, and what is and is not sufficient geographical proximity?*

Section 9767.3 of the regulations provides the criteria that must be met by MPN applications in order to be approved by the AD. The number of providers in a network is not the only way to measure access because it is possible that a provider is a member of multiple networks so the fact that a network includes a large number of providers is not the only measure of adequate access. Instead, section 9767.5 of the regulations describe access in more meaningful terms: geographic proximity to the employee's home or work location; time for obtaining appointment; and at least three physicians of each specialty needed to treat common workplace injuries to ensure that there is a sufficient number of types of specialists to provide choice and the ability to pursue the second and third opinion process.

4. *To date, how many managed [medical] provider network applications have been received by the department? How many have you approved? Do you foresee any circumstances under which a managed [medical] provider network would be deemed approved?*

It is my goal as AD to conduct a substantive review of all medical provider network applications within the 60-day time period provided by statute. I have established a MPN application team to perform this important review function.

DWC has received over 650 applications (including some duplicates or resubmitted applications and some withdrawn applications). New applications are arriving daily.

As of February 14, 2005, DWC has approved 92 MPN applications. Very few have been approved on the first review; most require resubmission with additional materials to correct the deficiencies identified in a disapproval letter.

As of February 14, 2005, there have been no default approvals. If the AD does not make a decision within 60 days from submission of a complete application or 60 days from resubmission after a disapproval letter has been sent, then a MPN application may be deemed approved. If this occurs, then it is important to recognize that the regulations provide the AD with the authority to suspend or revoke an approved application if the application does not meet the statutory and regulatory requirements. This provision allows the AD to review deemed approvals after the fact and take appropriate action.

Independent Medical Review

1. *Do you currently have contracts with independent medical review entities? If you do, how many have you contracted with? Is it your view that there are enough independent medical reviewers to review all of the treatment disputes that will arise when workers transition into managed [medical] provider networks? If you don't yet have sufficient contracts, do you intend to let managed [medical] provider networks move forward without enough review entities?*

The Division does not have a contract with an independent medical review organization. Most independent medical review organizations are structured to provide only paper reviews. As the injured worker has the option of an in-person evaluation and the DWC has expertise in randomly selecting review physicians for in-person examinations, we opted to perform this function in-house. The Division has received over 300 applications from physicians willing to serve as reviewers. As of February 8, 2005, we have had no valid requests for an independent medical review. Injured workers can freely select a new treating physician from within the MPN. Therefore, the Division anticipates the demand for independent medical review will remain low. At the present time, we believe that we have a sufficient number of physician reviewers to meet the upcoming demand. If the demand exceeds the Division's capacity in the future, the Division has identified two organizations that have expressed an interest in contracting with DWC to provide reviewers. The Division does not consider it acceptable to have MPNs move forward without an independent medical review process and do not foresee this as a possibility.

Department Staffing Issues

1. *Now that your division's funding has been restored, is it fully staffed? If not, when will the division be fully staffed?*

As of January 2005, DWC had 1172.4 authorized positions, of which 852.5 were filled and 319.9 were vacant. Since the start of this fiscal year, DWC has hired 87 new people to fill vacancies and has promoted approximately 100 existing DWC staff. An additional 25 new hires are already scheduled to report to work at DWC during February 2005. If DWC continues to hire new staff at the rate it has recently achieved, all the new positions would be filled within 12 months.

Due to prior reductions and ongoing workload from other divisions, the Department of Industrial Relations Personnel Unit was initially unable to handle the volume of paperwork required to hire new employees for DWC. As a result, DWC managers were forced to wait long periods to receive hiring certification lists, which resulted in delays in hiring.

To correct the situation, DWC loaned staff to the Personnel Unit, paid retired annuitants and student assistants, and entered into an interagency agreement with the Employment Development Department to provide trained personnel specialists to assist with the paperwork. These efforts permitted the Personnel Unit to reach critical mass in processing the paperwork necessary for hiring. All DWC managers are making hiring their top priority.

DWC set its initial priorities to fully staff the statewide call center and to fill judge positions, thereby fulfilling the priorities of the Legislature to streamline the system and to make information readily available to injured workers.

All of the call center positions have been filled and staff is in various stages of training. The call center currently services the incoming calls from 15 district offices and is ready to begin servicing the incoming calls from the 9 remaining offices as the new staff are trained. This alleviates district office staff from constant phone interruptions and ensures that consistent and correct information is given to callers. This is especially important since the number of incoming calls is increasing (from 13,000 in November to 16,000 in January).

The Workers' Compensation Administrative Law Judge examination was concluded in November and approximately 200 eligible candidates are on the statewide list. Interviews have been conducted in all offices where vacancies exist and offers are being made. Some of the new judges have started and others are winding down their legal practices and will be reporting in March.

DWC uses a number of specialty classifications that pose unique challenges for hiring. The Division has adopted a number of strategies to address the recruitment difficulties in specific classifications and expects to be able to fill all of its positions, even those that are historically difficult to fill.

510-R

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26 Evelyn J. Mizak
27 Shorthand Reporter
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APPEARANCESMEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

EVAN GOLDBERG, Consultant to DEBRA BOWEN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

SENATOR ABEL MALDONADO

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Trustees of the California State University

KATHY KAISER, Faculty Trustee

Academic Senate

CAROL R. CHANDLER

Trustees of the California State University

GEORGE G. GOWGANI, Ph.D.

Trustees of the California State University

1 MELINDA F. GUZMAN MOORE
Trustees of the California State University

2 JOHN CASAS, President
3 JT2 Integrated Resources
4 Vice Chair, Hispanic Chambers of Commerce

5 JULIAN CANETE, President and CEO
California Hispanic Chambers of Commerce

6 SCOTT SYPHAX, President and CEO
7 Nehemiah Corporation of America

8 CELESTE ROSE, Vice Chancellor, University Relations
9 UC Davis

10 JOE PARTIDA, Chair, Northern Region
Board of Directors
11 California Hispanic Chambers of Commerce

12 RAFAEL SANCHEZ, Board Member
13 US Hispanic Chamber of Commerce

14 ROY PEREZ
Roy Perez and Associates

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CHAIRMAN PERATA: Senator Maldonado, I'm going to ask you to come forward. I know you have to run off. Just sit there, make your statement, because we have other things to do.

SENATOR MALDONADO: Thank you, Mr. Chair, very much.

Mr. Chair, I have the great honor of introducing to you a great friend of mine, Dr. George Gowgani. I've known Dr. George Gowgani for over 20 years.

I can tell you that he's a good man. He's a man with passion for education, a passion for his community, but most importantly has always made it clear to me that he would never worry about who gets the credit, you just get the job done for the people you represent.

You see, Dr. Gowgani was my professor at Cal Poly San Luis Obispo. He taught me something that I've never forgotten. He taught the weeds class at Cal Poly.

CHAIRMAN PERATA: What?

SENATOR MALDONADO: Weeds, weeds. You know, weeds management. How to kill weeds --

CHAIRMAN PERATA: Were you in the football program?

[Laughter.]

SENATOR MALDONADO: It hasn't changed, Mr. Chair. He taught me to use Round Up. It's still the best thing. He told me that in 1986, that that would kill all the weeds. And I can tell you that after all these years, it's still is the same

1 product. It hasn't changed.

2 CHAIRMAN PERATA: Does it affect the flavor of
3 broccoli?

4 SENATOR MALDONADO: It's effective.

5 And my dad tells me, "I sent you to Cal Poly to
6 learn how to use Round Up."

7 I can tell you that he'll be an asset for the
8 State of California, and he'll be an asset as a Trustee. And
9 I'm just here wholeheartedly to support him, Mr. Chairman and
10 Members.

11 CHAIRMAN PERATA: Thank you, Senator. We
12 appreciate you for being here.

13 [Thereupon the Committee
14 acted upon other agenda
15 items.]

16 SENATOR BATTIN: Now we need to move on in our
17 agenda, and we need to do it orderly.

18 If we could have our first appointee up, Jeffrey
19 Bleich for the Trustee of the California State University, that
20 would be great.

21 If you are leaving the room, please do it
22 quickly.

23 Mr. Bleich, thank you for coming, and welcome.

24 MR. BLEICH: Thank you, Senator.

25 SENATOR BATTIN: First of all, do you have any
26 family or friends you'd like to introduce to the Committee?
27 That would be great.

28 MR. BLEICH: Actually, Senator Battin, my wife

1 and my children aren't here. I thought it was the better part
2 of valor that my wife not learn how to interrogate me any better
3 than she already does.

4 My children actually did want to be here, because
5 they thought it would be a great opportunity to miss school, but
6 they're in school today. But I brought a picture of them. It's
7 sort of a shameless attempt for the sympathy of the Committee.

8 [Laughter.]

9 SENATOR BATTIN: Do you have an opening statement
10 or comments?

11 MR. BLEICH: I do, thank you, Senator.

12 I'd like to thank the Members of the Committee
13 for giving me the opportunity to be here today and speak with
14 you.

15 I'd also like to thank your staff in particular
16 for having met with me and with the other nominees for the board
17 earlier, and for asking some very good questions and raising
18 some very important issues with us.

19 I'd also like to thank Chancellor Reed and the
20 staff of the CSU for their assistance.

21 And again, I'd like to thank my wife for not
22 coming today.

23 I'm very grateful to be nominated serve for the
24 CSU, and I would be extremely grateful for the support of this
25 Committee.

26 About year and a half ago, after the election,
27 Governor Schwarzenegger invited me to meet with him. He asked
28 me whether I'd be interested in working here in Sacramento and

1 leaving my current job.

2 And I told him that I really liked my job, and I
3 liked my neighbors. And that if my wife knew that I was
4 thinking about switching jobs and moving to Sacramento, I think
5 she'd be beside herself. And the Governor said, "Join the
6 club."

7 But what I did say to him was that I was very
8 interested in serving the people of California, and if there was
9 a way that I could do so without leaving my day job, I'd be
10 anxious to help.

11 When his staff contacted me and asked me if there
12 was anything in particular that I would be interested in, I told
13 them that there was only one thing that I would like to do, and
14 that is the CSU Board. It is to me the most important single
15 organization that I could contribute to, because for me CSU is
16 what public education in this state is all about. It's about
17 unlocking the potential of young people in California, for them
18 to fulfill their ambitions, and by giving them a low cost, high
19 quality education, and sometimes giving them the opportunity to
20 be the very first person in their family to attend college, and
21 to give them the tools to build a family and to build a life,
22 and to build California as nurses, and teachers, as engineers,
23 as the individuals who really make this state operate.

24 This year, CSU published a report that for every
25 dollar that's invested in CSU, the return is over four dollars.
26 I think that's -- that was what I suspected, and that's what
27 I'd like to contribute to, is that kind of investment in human
28 capital.

1 I know that you probably received some materials
2 about each of us who's been nominated, and including some
3 professional accomplishments, you know, whether it's working at
4 the Supreme Court or with former President Clinton. I hope you
5 won't hold any of those things against me.

6 The thing that wouldn't appear on a resume and
7 which I think is really the motivation for this sort of work is
8 that I have been very committed to public education all my
9 life. I was a public school student from kindergarten through
10 high school. I attended a public law school.

11 I've taught at public high schools in San
12 Francisco, including struggling ones. I've taught at Castlemont
13 High School in Oakland. I've taught at elite public schools. I
14 teach at UC Berkeley's law school. I've served on alumni boards
15 for public schools. I've mentored students from the CSU system,
16 in particular San Jose State.

17 And I've looked at public education from all
18 angles, and I've seen ways in which it has succeeded, and I've
19 also seen ways in which it has failed.

20 I'm a firm believer in the CSU mission. And as a
21 member of the Board of Trustees, that would be my commitment, to
22 try and help accomplish that mission.

23 There are a few critical goals that I think we
24 need to accomplish, and I'd just like to highlight very briefly
25 four or five of those.

26 The first is protecting access, making sure that
27 the schools remain open and affordable. That is a difficult
28 challenge, particularly in these budgetary times, but I know

1 that for the past year while I've been serving, that has been a
2 strong commitment of ours.

3 The second is to improve graduation rates, and
4 particularly the time to degree for students who are at the CSU
5 system. Right now CSU spots are very precious, and we want
6 students who are attending full-time to be able to graduate
7 within four years both because it saves their resources, their
8 time, and their money, but also because it permits other people
9 to take those classes and to be able to attend CSU.

10 A third goal is to improve the ease of transition
11 from community college to the CSU system. Right now there are
12 many students who go through the community colleges, and at the
13 end of two years are not eligible to transfer many of those
14 units towards their degree at CSU. And I think we need to work
15 on increasing the efficiency of transferring the articulation.

16 This is also an important way of maintaining the
17 diversity of the CSU system.

18 The fourth is to improve and extend our current
19 efforts at high school remediation. I think we're all very
20 proud of the EAP system, which is designed to make high school
21 students college-ready, and to assure that they can perform when
22 they arrive at a CSU.

23 Then finally, I think that we as Trustees have a
24 fiduciary responsibility for the financial viability of the
25 schools, and that means that we need to put our money where our
26 mouths are. In order for us to remain competitive, to be able
27 attract the caliber of presidents and administrators and
28 teachers, where the public sector can't provide the funds, we

1 need to help with private fundraising efforts, and I'm prepared
2 to commit to that as well.

3 Most of all, I want to ensure that the people who
4 graduate from CSU are equipped to deal with the complexities of
5 life, that they have the skills that a CSU education promises,
6 and would commit myself to accomplishing that goal.

7 So, with that, I will stop speaking unless asked
8 to, and would be very, very grateful for your vote.

9 SENATOR BATTIN: Thank you.

10 Are there any witnesses in support of our
11 nominee? Opposition to our nominee?

12 Members have questions? Senator Ashburn.

13 SENATOR ASHBURN: I have some questions and some
14 comments that are intended for all of those who are here
15 today.

16 SENATOR BOWEN: Senator Ashburn, I was just
17 sitting and thinking the same thing.

18 I have some questions that are really for all the
19 Trustees, and I hate to pick on the first.

20 FROM THE AUDIENCE: Go right ahead.

21 [Laughter.]

22 SENATOR BOWEN: The other Trustees would all be
23 in favor of that.

24 SENATOR BATTIN: I suggest you could ask them
25 all. Choose one. Say your question, ask them to answer it in
26 their opening comments.

27 SENATOR BOWEN: Should we bring them all up and
28 see if there are different views? It's unorthodox, but --

1 SENATOR ASHBURN: Have them all make an opening
2 statement --

3 SENATOR BOWEN: Maybe do the opening statements,
4 and then I think all of us have questions. I don't have any
5 individual questions.

6 SENATOR BATTIN: Okay.

7 To be fair to them, we should allow each of them
8 to do their opening statement.

9 SENATOR BOWEN: Yes.

10 SENATOR BATTIN: And then we'll address them all.
11 So, we'll put you on standby mode, Mr. Bleich.

12 SENATOR BOWEN: I'm sensitive to this because
13 during the first hearing of the Energy Committee during the
14 energy crisis, poor Bill Keese, who was then Chair of the Energy
15 Commission, had the wrath of San Diegans visited on his head.
16 And I have felt guilty ever since, so this is my opportunity to
17 extricate the guilt of putting Bill Keese first.

18 SENATOR ASHBURN: Mr. Chair, I don't feel any
19 guilt whatsoever.

20 I just think it's a unique opportunity to be able
21 to speak to the Trustees directly. So, there's some points I
22 want to make, and however you want to do that.

23 SENATOR BATTIN: Our next appointee is Herbert
24 Carter. Would you come up.

25 Mr. Bleich, don't leave.

26 Thank you, Mr. Carter. Do you have any family or
27 friends you'd like to introduce?

28 MR. CARTER: Unfortunately, I'm traveling by

1 myself.

2 SENATOR BATTIN: You're flying solo today. Did
3 you bring pictures of your family?

4 MR. CARTER: As a matter of fact no pictures. We
5 just arrived back in the country last night, and my wife said if
6 I tried to get her on another airplane today, she'd kill me.

7 [Laughter.]

8 SENATOR BATTIN: Do you have an opening statement
9 or comments?

10 MR. CARTER: I will make a couple of comments. I
11 do not want to take the Committee's time.

12 I had hoped that you would zero in on Jeffrey and
13 I wouldn't have to do any of this, but unfortunately the rule
14 changed.

15 Let me just say that I am delighted to be here,
16 to have the opportunity to appear before the Committee.

17 My background is perhaps a little different from
18 other Trustees who are coming before you. I've had the good
19 fortune of spending about a quarter of a century in the CSU
20 system. I started out as a low level staff person in the 1970s,
21 and then I had a career as the Executive Vice Chancellor of the
22 system, the second highest role in the system. And then went
23 away to retire and then was called back by Charley Reed to serve
24 as the President one of our campuses.

25 I was not looking to be a Trustee. I was called
26 and asked if I would be interested in doing this. And after
27 some hesitation, I agreed that I wanted to do it, basically
28 because I think that this state, this system, has been very

1 generous to me over a long period of time. And I've always had
2 the feeling that I had an obligation to give something back when
3 that opportunity presented itself.

4 So, I am honored to be nominated for a position
5 as a Trustee. I am honored to have your consideration of that.
6 I hope that I will have your affirmative support, and I promise
7 you that I will always do what I believe is in the best interest
8 of this state and particularly of the people of California as it
9 respects issues of higher education.

10 SENATOR BATTIN: Thank you.

11 Is there anyone here who'd like to speak in favor
12 of Mr. Carter? In favor, Ma'am? Please come up. We need to
13 get you on the record.

14 MS. KAISER: I am Kathy Kaiser. I'm the current
15 faculty Trustee for the CSU.

16 The statewide Academic Senate is starting its
17 committee meetings today. Normally I would join them, but it's
18 been a rare occasion that we would have six Trustees up for
19 confirmation hearings at one time.

20 I just wanted to say on behalf of all of them
21 that they have, in the year that I've had the pleasure to be
22 working with them, they have gone on campus visits. They have
23 been solicitous and careful to hear the voice of faculty and
24 students, sometimes in dissent, but very careful to listen to
25 the different voices, and that they have worked very hard to
26 consider the policy issues in their view of what was best for
27 the CSU.

28 So, I just wanted you to know that the faculty

1 takes a deep interest in these confirmation hearings, and we
2 were pleased that I could be present.

3 SENATOR BATTIN: So this is in support all of
4 them in general?

5 MS. KAISER: All of them in general. You took me
6 by surprise on the first one.

7 SENATOR BATTIN: Okay, thank you.

8 MS. KAISER: Thank you.

9 SENATOR BATTIN: Anyone who'd like to speak in
10 opposition to Mr. Carter?

11 So we will bring up our next. We'll put you on
12 hold, sir, and we will bring up our next nominee, which is Carol
13 Chandler.

14 Family, friends, photos?

15 MS. CHANDLER: Well, I do have a son in
16 attendance. My son, John Chandler, is here. And my good
17 friends Barbara Lavague and Rosie Burroughs are here in support.

18 SENATOR BATTIN: Welcome to the Committee.

19 MS. CHANDLER: My husband is back on the farm,
20 assessing some weather damage, so I hope you'll excuse him not
21 being here.

22 Good afternoon, everyone. Thank you, Senators,
23 for the opportunity to address you. And I would just like to
24 tell you a little bit about myself.

25 My background is rather unique. I bring some
26 unique characteristics to this position which the Governor has
27 appointed me to. And my past experience in education has been
28 as a teacher. And then I became a farmer, and a small business

1 owner, and a community volunteer. And toward that end, I have
2 had many experiences working in the Central Valley with
3 education, as well as on the state level as a Trustee, or rather
4 as a Regent and also as a member of the California Post
5 Secondary Commission for six years.

6 So, it gave me an overview of the entire higher
7 education system in the state. And I think that would stand me
8 in good stead.

9 I realize the importance of the California State
10 University system. And I'm very grateful for the opportunity to
11 serve.

12 I also join Jeff in having some goals that I
13 would like to accomplish as a Trustee. One is to improve the
14 access for those students in the Central Valley who rate as the
15 lowest college-going population in the state, and work towards
16 mentoring them and improving their opportunities for financial
17 aid.

18 Also, I would like to work to expand the
19 facilities and the capacity of the CSU system to accommodate the
20 Tidal Wave Two of students, which will be coming by the year
21 2010 to our system.

22 And then finally among my key goals would be to
23 work and collaborate, make partnerships with private industry
24 and business to improve our nursing programs, cooperation with
25 hospitals, and also since I'm in the field of agriculture, the
26 CSU system has wonderful applied agricultural research that we
27 use on our farms, in collaboration with industries such as the
28 wine industry, to improve the way that we do our business.

1 Thank you very much for this opportunity, and I
2 look forward to your questions.

3 SENATOR BATTIN: Thank you. We'll put you on
4 hold as well.

5 CHAIRMAN PERATA: I'd have run this meeting much
6 differently.

7 [Laughter.]

8 SENATOR BATTIN: When this is done, it'll be
9 shorter, however. I think we'll probably all appreciate it this
10 way.

11 I'm going to butcher your last name, George
12 Gowgani, come on down.

13 CHAIRMAN PERATA: I want to question him about
14 Maldonado.

15 SENATOR BATTIN: Do you have any friends or
16 family to introduce?

17 MR. GOWGANI: Yes, Mr. Chairman. Thank you so
18 much for the opportunity.

19 I'd like to like to introduce first my wife,
20 Marlie. And I might say that we just celebrated 40 years. We
21 married in this town about 10 blocks from here.

22 And my daughter, Farrah, and her husband, Chris.
23 And I thank him for taking the day off and coming here to this
24 meeting.

25 Mr. Chairman and Members of the Rules Committee,
26 it is quite an honor and a pleasure to appear here today. First
27 I want to thank also your staff. They were wonderful. They were
28 total professionals when they met us and let us know what the

1 process is. I really appreciate that.

2 I also want to thank the Chancellor's staff, the
3 Chancellor himself, who really, they went out of their way to
4 help us out. It has been quite an experience.

5 I also want to thank my former student and your
6 colleague, of course, Abel Maldonado. I have known him for 20
7 years, the kind of man he is, kind of young man he is. To this
8 day, he's been my good friend, family friend. I have not been
9 able to make him just once call me by first name. So, you can
10 see what kind of person he is.

11 It is quite an honor to be a nominee for the
12 Trustee of the biggest higher education system and also one of
13 the finest. Being a Trustee is an incredible responsibility. I
14 do not take it lightly. One that I am sure that the rest of us
15 feel exactly the same way.

16 I was very pleased that I got your
17 questionnaires, and I responded to those, and I stated my goals.
18 And if you have any further questions, I would be more than glad
19 to answer.

20 As I hope that most of you know that all my
21 experience, my academic as well as my professional life, has
22 centered around the California State University system. I'm a
23 very proud product of Cal Poly State University. I have
24 received my BS as well as my MS degrees from Cal Poly, thus I
25 feel I truly understand CSU students: their problems, their
26 challenges, and everything else that face them.

27 Of course, I was also a faculty member for over
28 20 years, starting off as a part-time lecturer, moved through

1 the ranks, then as a full professor. I truly enjoyed my
2 teaching career, and it was an extraordinary opportunity, not
3 only to teach a subject that I love -- I think the Chairman
4 would like to know a little bit about it, I think -- and also it
5 was an opportunity that I touched the lives and shaped their
6 future.

7 My former students have gone to become CEOs,
8 company presidents, entrepreneurs, politicians, and even a State
9 Senator.

10 And having been a faculty member over two
11 decades, I can sympathize with faculty and understand their low
12 morale. And with their compensations being today 17 percent
13 below the national average, I can fully understand that. I
14 served as a department head and Associate Dean of Agriculture at
15 Cal Poly, one of largest undergraduate programs, probably the
16 largest undergraduate program in the nation. These experiences
17 provided me the opportunity to guide and motivate the faculty
18 group and to bring out their best.

19 It also provided me a chance to learn how to work
20 efficiently with limited budget, not an easy task as you can
21 imagine, but a very, very rewarding experience. I discovered a
22 wide range of ways to deal with issues such as resource
23 management, how to secure outside funding to provide a program,
24 to margin of excellence.

25 Since one of my daughters also is a CSU graduate,
26 I have had the chance to experience CSU from the vantage point
27 of a parent, seeing first-hand the problems associated with
28 student progress and a timely graduation.

1 Because of my varied experiences with CSU, I feel
2 I really understand the difficulties our students face,
3 especially with ever increasing fees and costs.

4 I hope this gives you the clearest indication
5 that I bring to this position a personal knowledge of the CSU
6 based on 30-plus years of experience as a student, as a faculty
7 member, administrator, and a parent at one of the system's most
8 popular campuses.

9 If I can just make a small footnote. I'm almost
10 sure by this time you're wondering, he got a funny accent, where
11 is he from, and so forth? And obviously you are correct. I can
12 assure you that both myself and my wife, we are proud Americans
13 by choice, or sometimes called naturalized citizens. So that
14 really means that I can understand diversity, and I hope this
15 will be another dimension that I can bring to the Board of
16 Trustees.

17 Let me assure that if I am confirmed, I will
18 serve the citizens of the Golden State to the best of my
19 ability. I have a deep personal connection to CSU and look
20 forward to assisting and keeping one of the world's most
21 important and finest public education system.

22 Thank you, Mr. Chairman. I appreciate the
23 opportunity.

24 SENATOR BATTIN: Thank you.

25 Is there anybody who'd like to speak in support
26 for our nominee? In opposition?

27 Slide on over.

28 Our next guest will be Melinda Guzman Moore.

1 MS. GUZMAN MOORE: Good afternoon, Mr. Chairman,
2 Members of the Senate Rules Committee.

3 My name is Melinda Guzman Moore.

4 CHAIRMAN PERATA: Do you have any family or
5 friends that you'd like to introduce?

6 MS. GUZMAN MOORE: I do, as a matter of fact.
7 I'll start with the most important. My daughter is a third year
8 student at CSU Sacramento, and apparently she finished her exam
9 in time to be here, Dominique Guzman.

10 Next to her is my niece, Rosa Maria Guzman, and
11 my husband of 22 years, Donald Moore.

12 SENATOR BATTIN: Welcome.

13 Please, go ahead.

14 MS. GUZMAN MOORE: Thank you very much.

15 I know you've had an opportunity to review our
16 written materials, so I'll try to keep my comments brief. I did
17 want to highlight a few points for your consideration, and of
18 course, ask you to vote in support of my confirmation.

19 First of all, I am very excited and honored to
20 serve as a member of Board of Trustees. Although I'm a UC
21 graduate, the students at the CSU, their background parallels my
22 own personal background.

23 I am first generation college. My father was
24 raised in Ejido Sonora in northern Mexico, a land grant
25 community. Never had any formal education. My mother is from
26 the Ventura County-Merced County area, the daughter of
27 agriculture and railroad labor. Both of them instilled in me a
28 passion for learning. And candidly, it's that passion that

1 brings me to the table here today.

2 The students from CSU are first generation
3 college. They work. They're parents. They're on financial
4 aid. They are on work study. All of those were characteristics
5 that I had, and therefore I relate well to their needs and to
6 their issues, and I believe I can take those into consideration
7 as I meet my fiduciary obligations to them as students.

8 In addition, I was privileged to be appointed to
9 serve on the Board of Governors for the California Community
10 Colleges under former Governor Gray Davis. That experience gave
11 me an opportunity to learn well that system.

12 And together with my knowledge of the University
13 of California, as well as my experience on the Board of
14 Trustees, and as a parent of a CSU student, I believe those
15 characteristics give me a unique opportunity to help build
16 bridges before these -- between these three important systems of
17 public higher education at a time when we need to collaborate,
18 when we have limited resources, and we need to make those
19 dollars count for all Californians. It's not a time to be proud
20 of being a UC or a CSU or community college. We have to be
21 proud together that we're meeting the needs of all
22 Californians.

23 My personal background, therefore, as the
24 daughter of immigrant parents, an 18-year attorney, business
25 member, and community volunteer, I believe, will assist me in
26 meeting my fiduciary obligations to California and to the
27 students it serves.

28 The issues that we face have been addressed.

1 It's principally how to maintain access at a time when we need
2 to grow, and at a time that we have limited resources. These
3 are the challenges of all the systems. These are your
4 challenges, and together we can face them together to help
5 address the needs of California.

6 I want to note that since July, we've had the
7 privilege of serving together as members of the Board of
8 Trustees. I believe uniformly that constituent groups would
9 say of me, and I'm sure others of my colleagues here, that we
10 have created a new standard of accountability on this Board of
11 Trustees. We have asked questions from day one at the very
12 first meeting. They've been relevant. They've been business
13 mindful. They've been consistent with the passion of education
14 for all Californians. Together with my new colleagues, I know
15 we will well serve California and the students we need to serve.

16 Lastly, I would just comment that if I've had any
17 successes in my life time, I've attributed them to two things.
18 One is to my father and my parents in general who instilled in
19 me a strong passion for family and community, and a work ethic
20 that required me to work harder than others.

21 The second is my higher education. I have
22 absolutely no doubt in my mind that I would not have had the
23 opportunities that are reflected in my resume, nor would I be
24 sitting here today if I had not attended college.

25 And it's with those things in mind, with the
26 passion and work ethic that my father taught me, and with my
27 passion and commitment for higher education, which I know
28 created opportunities for me, my family, and the general

1 community, that I urge you to vote in support of my confirmation
2 so that together we can create new opportunities and open new
3 doors for new students in California, so that one day another
4 student similarly situated will sit here before you, hopefully
5 asking to serve again as a member of this Board of Trustees.

6 With that, I thank you for your time, and I urge
7 you to vote in support of my confirmation. Thank you very
8 much.

9 SENATOR BATTIN: Thank you.

10 Is there anyone who'd like to speak in favor?
11 Please come on up.

12 MR. CASAS: My name John Casas. I'm President
13 of JT2 Integrated Resources, a business that handles workers
14 comp statewide and headquartered in Oakland, California. I'm
15 also Vice Chair for the California Hispanic Chambers of
16 Commerce.

17 These comments are addressed to both the Members
18 of the Committee as well as to the Trustees. You need to
19 understand what you have as you add Melinda Guzman Moore to the
20 mix. She is primarily a person committed to perspective and
21 process.

22 Perspective. She's going to challenge this
23 organization to redefine mainstream. Melinda is a champion of
24 underrepresented groups and individuals. She will support
25 perspectives for people who deserve to be heard and people who
26 deserve to make a contribution.

27 As a woman lawyer, as the first Hispanic woman
28 President of the California Hispanic Chambers, as a mother and

1 parent within a multi-racial family, she has a unique
2 perspective.

3 In addition to that, she also views the Cal State
4 University system as a driver, a key contributor to the economic
5 engine of California. She will look at the resources that we
6 have, look to protect them and to expand them. So, that's on
7 perspective.

8 Secondly there's process. Melinda Guzman Moore
9 is a facilitator. She will reach out, I guarantee you, and
10 involve students, faculty, elected leaders, and business leaders
11 to get them involved in evaluating how effective are our
12 programs, and what perspectives, what changes, ought to be made.
13 And she will contribute to this team to make sure that that
14 organization is more effective.

15 So again, these comments made to you, those of
16 you who may confirm her, as well as those of you who may work
17 with her, she is phenomenal.

18 Thank you.

19 CHAIRMAN PERATA: Thank you.

20 SENATOR BATTIN: Thank you.

21 Next, please.

22 MR. CANETE: Good afternoon, Mr. Chairman,
23 Senators. Thank you for the opportunity to address you on
24 behalf of Ms. Guzman Moore.

25 I'm Julian Canete, President and CEO of the
26 California Hispanic Chambers of Commerce.

27 It is with pleasure that I communicate to you the
28 support of the Board of Directors of our organization, as well

1 as the over 80 Hispanic Chambers of Commerce throughout the
2 State of California, many of whom you have received letters from
3 in support of Ms. Guzman's confirmation to the CSU Board of
4 Trustees.

5 Ms. Guzman is a proven leader, business leader,
6 not only here in California but throughout the nation. She's
7 respected for her integrity and her high ethical standards, and
8 even more so for her ability to deal with the tough questions
9 and come up with the right decisions.

10 She will work with all stakeholder groups
11 involved to make the right decision for all Californians. She
12 has been a tireless advocate on behalf of business, but also a
13 tireless advocate on behalf of education, for she knows that
14 California's economic future is dependent upon an educated
15 workforce, and that the CSU system serves that purpose.

16 So on behalf of the California Chambers of
17 Commerce and our 80 Chambers throughout the state, we urge you
18 to support her confirmation.

19 Thank you.

20 CHAIRMAN PERATA: Thank you.

21 MR. SYPHAX: Mr. Chairman and Members, Scott
22 Syphax, President and CEO of Nehemiah Corporation of America.

23 I come also to support Ms. Guzman Moore in her
24 confirmation. I believe that much has already been said.

25 What I will say about Ms. Guzman Moore that has
26 not been said yet is that in her being a Trustee, one of the
27 qualities that is known by those that work with her but may not
28 have come forward here today is her absolute fearlessness and

1 commitment to the truth, and to getting solutions.

2 And so, on behalf of the 200,000 homeowners that
3 my corporation has created under her leadership as the Chairman
4 of our Board, we would urge your support for her speedy
5 confirmation.

6 Thank you.

7 CHAIRMAN PERATA: Everybody registered to vote
8 there?

9 MR. SYPHAX: Unfortunately, most of them are
10 outside of California.

11 [Laughter.]

12 CHAIRMAN PERATA: Just thought I'd take a
13 chance.

14 Good afternoon.

15 MS. ROSE: The Chair, Members of the Committee,
16 I'm Celeste Rose, Vice Chancellor for University Relations at UC
17 Davis.

18 And I'm pleased to be here to lend support to
19 Melinda Guzman Moore's candidacy. I've known the appointee for
20 more than 20 years, both personally and professionally, and know
21 her to be an individual of the highest integrity, with keen
22 intellect, and a dedication to excellent equal opportunity and
23 diversity across all of the segments of education, and a deep
24 commitment to the Master Plan for Higher Education that, as you
25 know, is a model across the world.

26 She has given of her time, talent and her
27 treasure to her alma mater and continues to do so. You would be
28 hard pressed to find a candidate who is more qualified than she,

1 and I would urge your support.

2 CHAIRMAN PERATA: Thank you.

3 MR. PARTIDA: Good afternoon Mr. Chairman and
4 Members of the Committee. My name is Joe Partida. I currently
5 serve on the Board of Directors of the California Hispanic
6 Chambers of Commerce, and I am the Northern Region Chair, which
7 includes the Bay Area. It also includes my home chamber, the
8 Hispanic Chamber of Commerce of Alameda County in Oakland. And
9 I am also past President of the California Hispanic Chambers of
10 Commerce, 15 years ago, which it's been many, many years.

11 I'd like to ask for your support for Melinda
12 Guzman Moore for the Trustees. I think she is an excellent,
13 excellent candidate. The reason is that my experience for the
14 last 18 years working with her at the Chambers of Commerce,
15 she's brought our state organization -- turned around it from an
16 organization that was growing, but now is really, really took
17 leaps not only statewide, national wide, but also
18 international.

19 She's able to bring partnerships together from
20 other organizations and other areas of economic development, and
21 being able to put us on the map.

22 I think it's very important that you have someone
23 at CSU system because our CSU produces many of the workforce in
24 California, a lot of them. And not only when they graduate do
25 they go to work in corporate America, do they go to work at
26 government and also nonprofits, but they also become small
27 business owners, or when they get laid off corporate and don't
28 get hired in government, they end up in small business anyways.

1 So, they still go back.

2 But there is a large growing community of small
3 businesses, and I think she understands that community. She
4 understands the growth of a small business.

5 And I think graduates from CSU system are going
6 to make a lot of that population in the future to come and will
7 be the large workforce of California. And I think it needs to
8 be an educated workforce, and a workforce that we're ready for
9 the next 20 years because, as you know, California, we're kind
10 of falling behind on the other education side, but I think this
11 is one way for us to catch up.

12 Thank you very much.

13 CHAIRMAN PERATA: Thank you, sir.

14 MR. SANCHEZ: Good afternoon. My name is Rafael
15 Sanchez, and I sit on the Board of Directors of the US Hispanic
16 Chamber of Commerce, which seeks to represent the interests of
17 the 1.3 million Hispanic-owned businesses throughout the United
18 States, of which a third are located here in California.

19 We are here in strong support of Melinda Guzman
20 Moore. In fact, we believe so strongly in her abilities and in
21 her passion that we have retained her as our legal counsel on
22 the national basis.

23 On a personal note, I've known her for 20 years
24 and have known her as a person of the utmost integrity, and a
25 passionate community person for all our communities. And as a
26 CSU grad, I would strongly urge support.

27 CHAIRMAN PERATA: Thank you.

28 MR. PEREZ: Good afternoon, Mr. Chairman,

1 Committee Members. I know many of you.

2 I had served -- had the pleasure of serving for a
3 president pro tem, and one of my jobs was to recruit --

4 CHAIRMAN PERATA: Identify yourself, please.

5 MR. PEREZ: Roy Perez, I'm sorry.

6 I was to recruit individuals in various
7 positions. And Melinda Guzman is one of those individuals that
8 we would strongly support because she carries three very
9 definite attributes that she'll contribute to the State of
10 California and the CSU system, and that is the commitment, the
11 dedication, and passion she has for those that are voiceless,
12 and also has the ability to discuss the substance of the CSU
13 issues.

14 And based on what we've seen with her and the
15 experience we've had with her, is that we strongly, strongly ask
16 the Rules Committee Members and Mr. Chairman to give her your
17 full support for confirmation.

18 Thank you.

19 CHAIRMAN PERATA: Thank you.

20 I know this is going to seem tortuous, but she
21 needs a break, so we're going to take a five-minute break and
22 then we'll come back.

23 [Thereupon a brief recess
24 was taken.]

25 CHAIRMAN PERATA: All right, we're going to
26 reconvene. I want to thank everybody for their patience.

27 I'm really sorry that it's like a sauna in here,
28 but we have a very difficult budget situation this year, and

1 anything that we can save here we can put into education.

2 So Members, questions?

3 SENATOR ASHBURN: I'm not sure these are
4 questions, but it's such a unique opportunity to have each of
5 you here, I wanted to take this opportunity to make a couple
6 points.

7 I'm a graduate of the Cal State system and very
8 proud of that. Probably would not have been able to get a
9 higher education were it not for the flexibility and the
10 family-friendly approach of the CSU.

11 And I congratulate each one of you. I'm glad
12 that Chancellor Reed is here.

13 What I want to say is that as much as you are
14 committed to lofty goals, and I listened carefully to each of
15 your statements, I think there's something more basic that needs
16 to be addressed. I view you, each of you, as members of an
17 emergency response team.

18 There is a tremendous customer service problem in
19 the CSU. The entire system is failing the individual needs of
20 the students because of the bureaucracy, and the rules, and the
21 antiquated systems, our students are not being well served, and
22 you addressed that in the point that you made particularly about
23 easing the transition from the community college to the CSU.

24 It is inexcusable in this day of technology for
25 transcripts to be inaccurate, for credits that have been earned
26 not to be transferrable, for students who are within the CSU not
27 to be able to get the classes that they need to graduate when
28 they need them, to be able to go to a book store and to acquire

1 the necessary materials that are a part of the syllabus for the
2 class that has long been on record but are not available.

3 These are inexcusable mechanical problems that
4 are wide spread and rampant throughout the CSU. And the reason
5 that no one talks about them is that students are so glad to be
6 gone when they graduate, they never look back to correct the
7 problem.

8 And I'm challenging each and every one of you as
9 Trustees, before we tackle the loftier goals of expanding the
10 educational offerings, the breadth of that which we try to
11 teach, or to expand our facilities, or to do the other things to
12 reach out and to include more students, we've got to fix what's
13 failing in the system today. It is just unbelievable the
14 problems that students encounter everyday with their
15 transcripts. It is inexcusable the problems that students
16 encounter everyday with the records and with their financials,
17 where fees are not accounted for, dollars are withheld. These
18 are nightmarish conditions for our students.

19 And frankly, the permanent faculty has got to be
20 addressed. I'm all for academic freedom, but more importantly I
21 am for academic accountability. To be in your office when you
22 say you're going to be there. How much more basic can it be
23 when students try to access their professors, and there are
24 announced office hours, and they go to the office at those
25 prescribed times, and that faculty is nowhere to be found.

26 Frankly, the faculty's not working very hard. And
27 that's why there are diminished capacities in our classes. The
28 faculty has to be asked to do more: to teach more, to work more

1 with the students.

2 And I just think this is a crisis situation that
3 requires an immediate audit that the Trustees ought to call.
4 And the problems ought to be identified, prioritized, and then
5 an action plan for addressing them.

6 And if you weren't sitting here for confirmation,
7 all of you collectively, I would not have had this opportunity
8 to say this to you, but I have this feeling that I'm speaking
9 for thousands of young people and not-so-young people who are at
10 CSU today.

11 The passion that you have demonstrated here is
12 appreciated. I'd like to see you first apply that passion to
13 taking a look at what's going on so that we can get greater
14 efficiency and accountability. Because before we can apply more
15 dollars, if we have them, if we had them, let's make sure that
16 what we're doing is working.

17 Anyway, that's my challenge to you.

18 CHAIRMAN PERATA: Chancellor, you might want to
19 find out what the hell campus he went to.

20 Which was it, Bakersfield?

21 SENATOR ASHBURN: I mean, I hear from students --

22 CHAIRMAN PERATA: No, no, no. Where did you
23 graduate?

24 SENATOR ASHBURN: Cal State Bakersfield, of
25 course, proudly.

26 CHAIRMAN PERATA: Any other questions? Senator
27 Cedillo.

28 SENATOR CEDILLO: I was about to attach myself to

1 the comments of Mr. Ashburn and leave it at that.

2 But I will not attach myself to his comments with
3 respect to the faculty. I think the faculty is challenged and
4 caught basically between a rock and hard spot. It's a
5 difficulty, I imagine, that you have. You know, the more
6 resources we have, the more we're able to recruit and retain.
7 Many are commuters. They don't simply teach at one site, but
8 they teach at other sites. Many aren't with tenure and have
9 challenges with respect to retirement, other fringe benefits.

10 That's the faculty that I hear from. So, I won't
11 attach myself to those comments.

12 But I do share the Senator's sense of urgency and
13 crisis. The Master Plan for Education was brilliant, and it was
14 a product of collective genius, but we failed -- we, the
15 Legislature, we the collective state of society -- have failed
16 to commit ourselves to it.

17 We want more. There's greater demand, and we
18 failed to commit more resources for it.

19 And so, I share Senator Ashburn's sense of
20 urgency and need.

21 I'm concerned that while we are permissive, while
22 the Governor has been permissive with respect to allowing you to
23 give one-third percent for financial aid that you have committed
24 to at this point only 25 percent. And I share the concerns that
25 the Senator raised with respect to the availability and the
26 costs of textbooks for the student population.

27 And I'm concerned to what happens when we don't
28 have the capacity to accept students, whether we're not

1 providing the financial aid, or we just don't very the seats. I
2 heard today, I have a stack of letters from students who lament
3 simply the availability.

4 I am so committed to you, though, that we daily
5 hear from one of your colleagues about the challenges that you
6 confront, and observe with keen interest this study of really
7 the time period that it takes for people to obtain their degree.

8 So, let me close very positively. I was
9 remarking, though I appreciate this tremendous diversity and the
10 kind spirit of collaboration that I've sensed from speaking to
11 all of you, there are other boards that do not reflect, although
12 required, reflect the diversity that this board does. In many,
13 many ways, this board is absolutely reflective of California in
14 many ways, particularly its commitment.

15 CHAIRMAN PERATA: Others? Senator Battin.

16 SENATOR BATTIN: I'll move the nomination, all of
17 them.

18 CHAIRMAN PERATA: You're halfway there.

19 Senator Bowen.

20 SENATOR BOWEN: Thank you, Mr. Chair.

21 My questions really are for all the Trustees, so
22 whoever feels the best equipped to answer, I think, can.

23 There are two issues that I'd like to talk about.
24 Neither one goes to the quality or the ability of any of the
25 Trustees, all of whom I plan to vote for.

26 One has to do with student fees, and the other is
27 a concern about doctoral programs. So, I guess we'll start with
28 the second one because it's a little easier to get our hands

1 around.

2 There is a measure pending that would allow CSU
3 to provide doctoral, professional and clinical doctoral degrees
4 in number of professions, one of which is audiology. And I
5 believe that it has -- there is a bill that's been introduced in
6 response to a problem that's expected to arise when the American
7 Speech, Language, Hearing Association, which is a national
8 professional association, representing audiologists and the
9 accrediting body, mandates that audiologists must have an earned
10 doctorate to attain professional certification.

11 CSU, I think, has said, well, all right, let's
12 deal with this in a practical way, and deal with the doctorate,
13 although that is a change from the Master Plan.

14 My concern and question is whether the underlying
15 requirement makes any sense? Are we going to need to have
16 anyone testing second graders for hearing have a doctorate in
17 audiology, because if that's what the professional certification
18 of this private organization does, I'm fearful about our ability
19 to -- any potential of having enough audiologists to deal with
20 the needs of the hearing impaired and testing.

21 My question for the CSU is, in deciding to
22 sponsor this bill, and I believe it's a sponsored bill, did you
23 have any discussion about that question of whether it makes any
24 sense? Or whether you could take a role in pushing back on this
25 association? Or whether it's better for us to say we're going
26 to have a different -- if the professional association's going
27 to insist on a doctorate, then California needs to have its own
28 independent standard so that we don't essentially -- I mean, I

1 don't know how many audiologists graduate in California on an
2 annual basis, but my guess is it's not a large number.

3 MR. BLEICH: I'd be happy to give a preliminary
4 response, and I'm sure that the other nominees will be able to
5 correct anything I say which is wrong.

6 The discussion about providing doctorates really
7 came up in the context of a broader issue, which is that there
8 are a number of areas in which the state is starved for certain
9 professionals, nursing being one of the areas, audiology being
10 another, in which the UC system really doesn't have a -- have a
11 robust system. And that we already have the resources,
12 training, skills in the CSU system to provide doctorates in
13 those areas.

14 There was an attempt to develop a joint doctoral
15 program with the UC so as to stay within the contours of the
16 Master Plan, but frankly, that has been disappointing. We've
17 only been working on this for about a year, but it seems as
18 though this has been something that has been going for three or
19 four years with relatively few doctorates being issued, and a
20 lot of red tape being generated. And that seems to be
21 dis-serving the people who would want to get PhDs, and it's also
22 dis-serving the state, which needs these people with the doctoral
23 training.

24 So, the broader question that I think is
25 presented by the bill is whether CSU, in certain narrow areas,
26 would be able to assume a role which traditionally has been
27 assumed by the UC system, but that the UC is not stepping up to,
28 and that CSU is really in a role to assume, without really

1 deviating in any substantial way from the Master Plan.

2 In terms of the second, and I think the main
3 thrust of your question, which is: what about the fact that you
4 have a crediting body making unreasonable demands upon the
5 state?

6 I think that's a fair point. And it's a
7 difficult one, I think, for any governing board or institution
8 to address if you're talking about national certification. To
9 some extent, we may be able to push back.

10 But the broader question is, if we are going to
11 be training CSU graduates to be effective nationally, and to be
12 able to operate at the highest levels of their profession, we do
13 need to respond to the dictates of the national market. And if
14 the national market requires a Ph.D., that is something that we
15 need to at least make a decision about.

16 If we don't want students to be able to compete,
17 well then, we have to make that choice. If we do want them to
18 be able to compete nationally at the highest levels, then we may
19 have to assume that role.

20 MS. CHANDLER: Can I just clarify something?

21 SENATOR BOWEN: And I don't know. I may be
22 wrong, perhaps, that a Ph.D. should be required before you can
23 test a child for hearing. But my gut level reaction to it is
24 that we're going to have a lot of kids who don't get tested if
25 that's the requirement.

26 MS. CHANDLER: Well, that could be a concern.

27 However, I wanted to make one clarification.
28 It's not a Ph.D., in that a Ph.D. is a research doctorate.

1 Whereas, our degrees would be applied doctorates, and I don't
2 know the exact terminology for audiology, but I know in the
3 education field it's an EDD.

4 So, it's not a research degree.

5 SENATOR BOWEN: Right. I referred to it, I
6 think, as a clinical.

7 MS. GUZMAN MOORE: It's an applied or clinical --

8 SENATOR BOWEN: Clinical slash professional, was
9 the way it was described to me. No, professional slash
10 clinical, I'm sorry.

11 MS. GUZMAN MOORE: Senator, I wanted to offer a
12 couple of other comments as well.

13 In some respects it's an economic issue. Our
14 students who want to obtain these degrees currently would have
15 to travel out of state in order to obtain that degree, so that's
16 an important consideration.

17 It's already been commented on that our
18 colleagues at the University of California simply aren't
19 offering this as an option.

20 We have the capacity. There is a significant
21 need, and it's an economic issue.

22 Thirdly, I would say, that there is a tremendous
23 need. We've talked about remediation, especially at the CSU. I
24 would challenge my colleagues on the board as well as the other
25 members that it's significant to have trained audiologists, if
26 for no other reason than some of the those students who need
27 remediation likely have not been tested for audiology issues,
28 likely suffer in some respects from disability, learning

1 disability issues. And we can help solve some of the
2 remediation issues if we train people who can go into the K-12
3 and do that effective testing.

4 So, there are a number of considerations. And I
5 would urge us to take a look at some of the issues regarding the
6 accreditation and the standards of care that are now being
7 imposed on our audiologists in California. But at the same
8 time, we need to be mindful and take a look at those other
9 issues that may compel us to actually move in that direction.

10 CHAIRMAN PERATA: If I might. I'm sorry to
11 interrupt.

12 Senator Battin has to leave, so I'd like to open
13 the roll on his motion so that he may vote on the confirmation.

14 SENATOR BOWEN: Is it a motion to confirm all
15 five?

16 CHAIRMAN PERATA: Yes.

17 SECRETARY WEBB: Battin.

18 SENATOR BATTIN: Aye.

19 CHAIRMAN PERATA: Thank you.

20 Senator Bowen, you may resume.

21 SENATOR BOWEN: For me, this raises a resource
22 allocation issue, because the fees that are collected by the CSU
23 system do not cover the cost of educating a student, and we have
24 a lot of acute needs at the undergraduate degree level,
25 particularly in areas like nursing.

26 And to the extent that we devote resources to
27 developing new programs at the doctoral level, whether it's
28 clinical or not, it still requires an allocation of resources

1 that then does not go elsewhere. And since we're not likely to
2 write you significantly bigger checks because we have own
3 resource issues at the state, I'm just concerned about that.

4 And again, particularly about whether there has
5 been a discussion about the accreditation. And I know it is not
6 your responsibility to determine who can do audiology work, but
7 if you're going to press legislation that moves in that
8 direction, it just seems like a discussion about the underlying
9 issue is probably in order.

10 Because presumably you'll have fewer
11 undergraduates graduating in audiology. You'll have the same
12 resources in the department, and you add 40 doctoral students,
13 you will have less money to deal with undergraduates. Right?
14 Unless Mr. Comer, who was my math teacher in second grade, sort
15 of misled me.

16 MR. CARTER: Senator, the wise part of doubt
17 would be to say nothing, but I've never been known to be wise in
18 that way.

19 I think you raise -- you raise a valid point with
20 respect to the accrediting agencies having such tremendous
21 impact in these kinds of decisions. But that is not one that I
22 think we can solve.

23 Have we talked to them? I think that over the
24 years that I've been involved the this business, I've talked to
25 more people in accrediting than I'd ever want to see again in
26 life.

27 Sometimes you get lucky. Sometimes you can show
28 them a different way to do things. I don't think in this case

1 that's possible.

2 Although all of us come new to this particular
3 set of issues, I can only tell you that, while I have not been
4 involved in that discussion, it is not something that I will not
5 look at as we go forward.

6 With respect to the issue of the doctorate and
7 the Master Plan, I think most of you know that the Master Plan
8 reserves the University of the California for Ph.D. research
9 degrees. The University of California, and I have lots of good
10 friends there, sometimes find it very difficult to be responsive
11 to the needs of the people of the state. And so, we find
12 ourselves frequently caught up in a situation where there is a
13 demand that is clearly recognized, that falls within the
14 legitimate purview of the University of California, but the need
15 does not get addressed. Then what do you do?

16 We try to be inventive. We try to find ways of
17 doing within our current resources those things that the state
18 needs. This is one of them.

19 I do not anticipate that there will be a
20 tremendous drain on funds away from the basic mission of this
21 system in order to do this program. Charlie Reed would never
22 permit that, number one.

23 Secondly, let me just move this to another
24 level. For a long time there's been a clear recognition in this
25 state that there needed to be more attention given to
26 educational doctorates in another area, educational
27 administration. The demands on high school people, on
28 principals now who have to be managers, who were never trained

1 to do that, and can't do it very well, required advanced
2 studies.

3 The University of California and the CSU have
4 long had these agreements about joint doctoral degrees. We wind
5 up getting five people signed up to go into a program somewhere
6 when there's need for 500.

7 So, we try to be responsive to what the needs are
8 in this state. Sometimes that runs up against the barrier of
9 what appears to be the Master Plan requirements, but always, I
10 think, our intent is to try to be responsive. And we're not
11 trying to do anything that we shouldn't be doing. We're just
12 trying to carry on the business of this state, help people to be
13 successful.

14 SENATOR BOWEN: I really have no quarrel with the
15 decision, if there's going to be this accreditation, to do that.
16 But the question is, who in the process of looking at this stops
17 and says, "Wait a minute. Why are we requiring a doctoral
18 degree in audiology?"

19 We have in many professions a difference between
20 a physical therapist and a physician; psychiatric technician
21 and a psychologist and a psychiatrist. There are levels.

22 I can understand why the crediting organization
23 wants everyone, you know, because you basically limit the number
24 of people who can do the job, and we know what the resulting
25 salary pressures are.

26 But I would hope that we could have a more
27 thoughtful discussion about some of those issues as we look at
28 the needs, so that we're serving not only the needs of the

1 educational institution.

2 And you're going to have some students who just
3 really want to pursue that level, and there's going to be a need
4 for that. I'm not saying that no one should go get a clinical
5 doctoral degree. I'm sure that some people should.

6 The question just is whether we ought to accede
7 to the requirement that anybody who practices audiology in the
8 State of California, what is it, seven years then?

9 MR. CARTER: Would it be helpful if, on behalf of
10 my colleagues, I'm sure they would not disagree with me, that we
11 promise you we'll take a look at it going forward?

12 SENATOR BOWEN: I think just that we're going to
13 have a discussion in the Legislature, and I'd like the Trustees
14 to be part of the discussion.

15 MR. CARTER: It's going to come up, and we'll do
16 that.

17 MR. GOWGANI: Mr. Chairman, if I may. If I can
18 just respond to Senator Bowen's comments.

19 Believe me, the first question that I -- when the
20 subject came, the first question that I asked Chancellor, I
21 said, "Charley, would this take anything away from the
22 undergraduate program or not?" He assured me not, and with good
23 explanations.

24 I fully understand our strengths in the state
25 university systems undergraduate education. If anything takes
26 away from that, I will not be in any form or shape in favor of
27 it.

28 Having said that, you know our higher education

1 system in the State of California has evolved. Where the state
2 university system 50 years ago, where we are today, is, you
3 know, totally unreal. And I observed and I witnessed, you know,
4 most of those years.

5 So we have, we've really moved to the next level.
6 Plus, if the legislation passed, and you will see that there is
7 all kinds of safety valves, and there will be plenty of time,
8 especially for Trustees, to make sure that, you know, as far as
9 accreditation and what program is offered where, will be totally
10 safe, safely caught.

11 I also want to mention one more thing, Senator
12 Ashburn's concern. Senator, I lived through some of those same
13 things that you mentioned, those complaints, those concerns. I
14 graduated Sacramento City College, right in here. I transferred
15 to Cal Poly. I know the problems that you're talking about.

16 As a department head for over ten years, I
17 struggled with those issues. All I can assure you, I can tell
18 you help is on the way. We have already made several changes
19 recently probably lot of people, they don't even know about, to
20 facilitate, especially this matter of transfer.

21 Also, what we have, a road map that we're working
22 on. It will be done, I can assure you. What we call the road
23 map so when a student knows he's in junior college, community
24 college somewhere, if he wants to get a certain program, certain
25 school, what he and she has to do, without losing any credits,
26 any courses, so that in a timely manner can transfer and then
27 graduate.

28 So, I can assure you, those are kind of issues

1 that, you know, you talked about, you mentioned. Those are near
2 and dear to my heart. Why? Because for almost 30 years, I had
3 to struggle with them.

4 SENATOR BOWEN: I think my only real point in the
5 discussion is that very often, and I'm going to accuse us of
6 doing the same thing, we all operate in our own narrow worlds,
7 and we don't think sometimes about the broader implications of
8 what we're doing.

9 But we do government best when we hear from all
10 the perspectives and work jointly. So, all I'm asking is that
11 we take another look at that issue and be open to some
12 discussion of the impact, not on students who want to pursue
13 that advanced education, but on the people who need the
14 services.

15 My next question is not about how you feel about
16 the flags --

17 [Laughter.]

18 SENATOR BOWEN: -- of any country. So, you can
19 all relax.

20 But it does have to do with another issue that
21 I've spent sometime on in government as we have moved from, as
22 the private sector has, from an economy that was largely cash
23 and checks, to one that is increasingly credit and debit card
24 related.

25 There are at least 15 CSU campuses that have
26 begun to place a surcharge on tuition payments made by credit
27 card, and I'd like to explore that a little bit. In particular
28 because for two reasons as background.

1 One, in the private sector it's illegal to place
2 a surcharge on credit card transactions. It's long been
3 illegal.

4 And second, many organizations, a lot of
5 nonprofits, are voluntarily moving towards, speedily moving
6 towards accepting credit cards because it costs less to process
7 a credit card transaction than it does to pay to process a check
8 or to accept cash. And to the extent that you impose a
9 surcharge, you drive traffic back the other way.

10 This is particularly relevant to an organization
11 that is attempting to process an enormous number of transactions
12 such, as registration, in a small period of time where, if you
13 have to staff up to talk to everyone in person to accept a
14 check, or you have to process all the checks, you don't get to
15 take advantage of the economics of driving people -- I don't
16 want to say driving; it should be an option -- but I know that
17 young people today are more and more going on line to do their
18 registration.

19 And I know that one of the things that happens
20 is, people hit that credit card page because that's the only way
21 you pay if you go on line; right? You can't feed the cash into
22 your PC yet, although that may be coming, I don't know. But
23 they hit that part where they realize there's a surcharge, and
24 they stop. Then they show up in person.

25 So, my first question is whether this surcharge
26 is policy that was adopted by CSU Trustees, or whether it was
27 something that was done on a campus-by-campus basis?

28 It's my understanding that all these questions

1 that I'm asking had been provided.

2 MR. CARTER: I believe that the -- I'd like to
3 frame this a little differently, that the fee is a transaction
4 fee for the use of credit cards. It is a fee that is applied, I
5 think, throughout the state. It is under the same regulations
6 as those that have been set up by other state agencies for this
7 kind of use of credit cards. And it is consistent with,
8 identical, I think, to what is authorized under the General
9 Services Agency.

10 SENATOR BOWEN: I'm fighting with them about it,
11 too.

12 MR. CARTER: Oh, I see.

13 SENATOR BOWEN: I'm not singling you out.

14 I'm questioning for all of the agencies that are
15 doing this, the economics of it. Because what keeps happening
16 is, I get the report of what the cost of processing the
17 transactions do, but no comparison of what it costs to do it by
18 check or cash, or what happens in soft costs when people show up
19 to register in person because there's a surcharge, or a
20 transaction fee, whatever you call it. Whatever you call it, it
21 would be illegal if you walked down to your corner store in
22 California.

23 MR. CARTER: I don't -- I don't have an answer
24 for you. It is, again, an issue that I think we need to take a
25 look at.

26 I was aware of the legislation that you've
27 introduced in this area.

28 My own gathering, quickly, of some information

1 from the CSU system was that it's probably about a \$7 million
2 issue for the CSU system. If we did not collect this fee, it
3 would -- it costs about \$7 million to handle this, I'm told.

4 SENATOR BOWEN: What does it cost to do it the
5 way you're doing it now?

6 Again, this is exactly the issue that I have, is
7 that people keep telling me what it costs to do it by credit
8 card, but no one says here's what it costs --

9 MR. CARTER: So you want a comparative analysis
10 of --

11 SENATOR BOWEN: Yes, sure.

12 MR. CARTER: -- of what happens if somebody takes
13 the check, the bank check, versus the credit cards.

14 SENATOR BOWEN: Yes.

15 MR. CARTER: I can't answer that for you. I'll
16 try to find an answer.

17 MS. GUZMAN MOORE: Senator Bowen, I just wanted
18 to offer a couple of comments.

19 Number one is, I think it is an important issue,
20 and I think all of the Trustees will look into that issue.

21 I think we also all agree that it's important to
22 offer the flexibility for students and their families to pay by
23 credit card. So, we're going to have to solve this economic
24 issue, because it is one that the CSU, as a system, can't afford
25 to bear the cost of the \$7 million, so we'll either have to
26 negotiate out of that, figure out what the cost is --

27 SENATOR BOWEN: You're in the trap. I mean, when
28 you talk about the seven -- this is like talking about the

1 Corrections system and saying that educating low level offenders
2 or providing substance abuse is going to cost taxpayers \$36,000
3 dollars a year, but not saying what the cost of not doing it is.

4 MS. GUZMAN MOORE: It's an analysis that we're
5 going to have undertake, because I don't have that answer. But
6 I agree with you that it is one that we're going to have to do.

7 But more importantly, we have to maintain the
8 flexibility for students and their families to be able to pay by
9 credit card, because we do know that without that flexibility,
10 there are students who simply won't go to school one semester
11 because they don't have the cash or the resources to do so.

12 SENATOR BOWEN: I totally agree.

13 MS. GUZMAN MOORE: So, we have to fix this
14 problem.

15 SENATOR BOWEN: I totally agree with you on that.
16 I actually think that the burden of the transaction fee or
17 surcharge falls the most on those who have no other option but
18 to use credit card because they don't have parents who can
19 simply write a check for the fee for whole year at one time.
20 And their only way to gets a student loan is through a credit
21 card company, which raises some other issues about Cal Grants
22 and student aid.

23 The other questions about this are: how the
24 vendor contracts for the processing were arrived at; whether
25 they were competitively bid; whether there's one contract for
26 the entire CSU system; whether it's possible to achieve
27 economies of scale in doing that; whether the transaction fee is
28 only what the credit card company charges, or whether it is more

1 than what the credit card company charges, and then what the
2 incentive is for the Trustees to negotiate the lowest possible
3 credit card cost if they're going to simply pass on whatever it
4 is.

5 I know you personally would like to have it low,
6 but there's no institutional incentive.

7 You all are Trustees. You're not responsible for
8 this. You're getting the frustration of someone who's watched
9 Jewish Federation move, and NPR, and PBS move very hard to
10 credit card processing because there are fewer bounced checks,
11 much lower costs in chasing down somebody whose payment turns
12 out not to be good. You get the cash immediately so you have a
13 float benefit that's never calculated in this whatever fee that
14 I get on the cost. And nobody looks at the price of who's
15 negotiating what.

16 So, you're here so I get to ask you.

17 And I think we're going into a phase when we want
18 90 percent of the students to be able to do this on line, and we
19 don't want people to do -- the Governor's Office just took the
20 fee off drivers license transactions, or DMV transactions. The
21 credit card fee was just removed, the surcharge. Why? People
22 were hitting that stage of doing a DMV transaction on line and
23 saying, "Geez, it's going to cost me," and in this case it was
24 four dollars, or seven dollars more, and saying, "Hey, the stamp
25 is 37 cents." And they stopped what they were doing.

26 We know that counter service is the most
27 expensive way to process things, but it takes a look at --

28 MR. BLEICH: Senator Bowen, just from my

1 perspective, I think you've raised an important question, and
2 one for us to probe when we look at the analysis of the
3 economics of this. I mean, clearly we know how much it costs
4 the CSU system in terms of the transaction fees that we receive
5 that are currently being passed on to students.

6 The question that you raise is, well how much are
7 we saving by using the credit card system, particularly allowing
8 people to pay on line, because you save human resources time,
9 and bounced checks, and all the other --

10 SENATOR BOWEN: Float, bounced checks.

11 MR. BLEICH: And I think that's certainly an
12 issue, and we want to have real numbers that we're dealing with,
13 not part of the equation. So, that's very helpful to us, and I
14 think it's something we can work on.

15 SENATOR BOWEN: If I could have a commitment from
16 you all to help me get real numbers so that we can evaluate, I
17 have no desire to take money out of the CSU system at all. But
18 I really want us to move into the 21st Century.

19 CHAIRMAN PERATA: Say "yes".

20 ALL NOMINEES: Yes.

21 [Laughter.]

22 MR. CARTER: I thought I had said that already.

23 SENATOR BOWEN: We've learned to be exceedingly
24 clear.

25 Thank you, Senator Perata.

26 CHAIRMAN PERATA: You're quite welcome.

27 I just really have one question, and it's
28 probably -- it may be answerable now, and Senator Cedillo

1 alluded to this with the drop in the third to 25 percent on
2 student aid.

3 I believe, I affirm everything that everybody's
4 talked about regarding the central importance that the Cal State
5 University system plays in our system. I do think it's the
6 school of the working class. I think we provide our nurses, our
7 teachers, and it is really the most fundamental way for people,
8 and what Ms. Guzman Moore is a shining example of, one of life's
9 great equalizers.

10 So, the question of access, student access,
11 student fees versus student aid, you know, as we begin to winnow
12 that down, and we don't have to have a debate on why we're doing
13 it or if we should do it, but just deal with the reality.

14 I'm very interested in how you make decisions,
15 establish policies, based upon a shrinking amount of money? And
16 if you have a thought, and I'm sure you do, but this, I think,
17 is going to be a central issue until we can get ourselves -- you
18 know, if we're 17 percent behind the national average in what
19 we're paying our faculty, that is astounding.

20 The Director of budget of the State of California
21 right now would like us to have a budget balancing amendment
22 that would be drawn from Wisconsin. And I said, "I think
23 Wisconsin's got a pretty damn good school system. No one's
24 making that case here."

25 So, I'm sure he listens to all these meetings.

26 But I'm really concerned about the access,
27 because if we start winnowing down the access, we're never going
28 to recover from that.

1 What are you disposed to do? This isn't a yes or
2 no question.

3 SENATOR BOWEN: Do you want the flag question
4 back again?

5 [Laughter.]

6 CHAIRMAN PERATA: Let me just put it to you this
7 way. That is something that's extraordinarily important.
8 You're not insensitive people; you know that.

9 And the fact that this is, as Gil said, the most
10 diverse group, I just entrust that to you as one of the major
11 issues that you're going to face.

12 The other thing I'd like to urge you is to become
13 advocates. Some of you don't seem like you're going to shrink
14 behind any controversy, but it's really important. You're
15 really free agents as soon as we call the roll.

16 I don't expect you to do -- some of you are
17 Democrats, some of you are Republicans. The Governor appointed
18 you. We're going to confirm you. You are free agents. You're
19 entitled to go your way.

20 And I don't expect any of you are going to use
21 this to launch a career. So in that sense, I would really
22 encourage you to be as advocates for your own point of view, for
23 the health of the system.

24 I think this is extraordinary group of five
25 individuals. I congratulate the Governor. I thank you for
26 being willing to do what you're doing.

27 But if we ever really needed some people who are
28 independent thinkers, have strong opinions, and can make the

1 case for higher public education in this state, that's been
2 gifted to you. And thank you for being willing to do it.

3 I would just say on behalf of the Senate that if
4 there is any way we can help you, Senator Bowen suggested that
5 we would like your point of view on things that effect how we're
6 going to effect the lives of your students, and so don't be shy.

7 With that, I'd like to open the roll and call for
8 final confirmation our recommendation.

9 SECRETARY WEBB: Ashburn.

10 SENATOR ASHBURN: Aye.

11 SECRETARY WEBB: Ashburn Aye. Bowen.

12 SENATOR BOWEN: Aye.

13 SECRETARY WEBB: Bowen Aye. Cedillo.

14 SENATOR CEDILLO: Aye.

15 SECRETARY WEBB: Cedillo Aye. Perata.

16 CHAIRMAN PERATA: Aye.

17 SECRETARY WEBB: Perata Aye. Five to zero.

18 CHAIRMAN PERATA: Congratulations to all of you.

19 MR. CARTER: Thank you very much. Thank you all.

20 [Thereupon this portion of the
21 Senate Rules Committee hearing
22 was terminated at approximately
23 4:15 P.M.]

24 --ooOoo--
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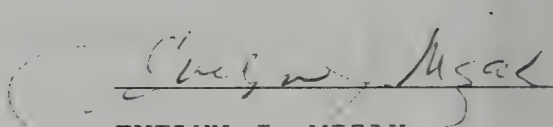
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of May, 2005.


EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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VIA FEDERAL EXPRESS

Ms. Nettie Sabelhaus, Appointments Director
Senate Rules Committee
Room 420
State Capitol
Sacramento, CA 95814

Dear Senator Perata:

Thank you for your letter of December 22. I am very honored to have been nominated to serve on the California State University Board of Trustees, and I look forward to meeting with you and the other members of the Committee.

Per your request, this letter responds to specific questions you've raised about the future of the CSU and my goals for helping to contribute to CSU's mission. I hope that this is helpful.

Question 1. *Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as a member of the California State University Board of Trustees?*

My principal objective as a Trustee is to ensure that every decision we make advances the goal that CSU system remains open, affordable, and valuable to every qualified person who seeks higher education. Giving Californians a place where they can receive an affordable, high quality education is critical to their well-being and ultimately, the well-being of the State. I believe that my job is to help promote a robust California State University that can provide a path to personal satisfaction, economic security, and to a stronger State. To that end, I have some other, more specific goals.

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First, I think we need to work with the public schools to ensure that more students are qualified and eligible to attend CSUs and to reap the benefits of a CSU education. Too many students graduating from California high schools are not equipped for higher education because they lack basic computational skills, and the ability to read and write proficiently in English. I would like to help CSU to develop their junior year high school exam program to assess competence in English and mathematics, and to help those who are not prepared for higher education to learn those basic skills before they graduate.

Second, I think we need to ensure that CSU meets its obligation to provide students with a high quality education and gives them the ability to see their studies through to graduation in a timely fashion. The majority of CSU students are over 22 years old, and have work and family responsibilities. Because these students cannot take a full-course load, they may have difficulty sustaining their studies and ultimately graduating if the schools do not: (1) allow them to focus their education on core units, and (2) make these courses available at convenient times. I want to emphasize through our policies and budgeting priorities that campuses have the duty to be responsive to the class scheduling needs of working adults. I am very pleased that the Chancellor has been working to advance this goal by reducing unnecessary units for the bachelor's degree and encouraging flexibility in course scheduling.

Third, I think we need to promote the goals of the Master Plan by improving the ability of those students enrolled in community colleges to complete their degree at a CSU. Too many community college students who wish to receive a bachelors degree find that their courses will not transfer. In the time that I have served as a member of the Board, we have worked with the CSU's staff to improve coordination between these two systems.

Finally, one of my principal goals is to ensure that no child is turned away from a CSU because they cannot afford to attend that school, and that our best faculty and staff do not leave CSU because they cannot get the resources that they need. We need to improve and expand our private fundraising efforts by building a capital campaign. As a member of the Alumni Board of UC Berkeley's law school, I know that great universities need great financial support. I intend personally to contribute to this capital campaign and to draw on others to join me.

Question 2. *CSU plays an important role in preparing a skilled state workforce. Two critical areas of need are teacher preparation and nursing education where workforce shortages have been critical for years. What is CSU doing to address these workforce preparation needs? How are you monitoring the success of these and other efforts to meet the skill and knowledge requirements of the California labor market?*

Because I have only been serving on the Board for a relatively brief period of time, I may not have a comprehensive knowledge of all of the ways in which CSU is addressing workforce preparation for teachers and nurses. However, I share your concern about the critical need to

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train and expand the pool of qualified people in these essential jobs. To that end, I have devoted a good deal of time to understanding CSU's efforts in these areas.

First, with respect to preparing teachers, I believe that CSU is unique among public institutions in attempting to ensure that all graduates of its teaching programs are in fact fit to teach. It is the only system in the Country that actually evaluates all new teachers and reports the results of those evaluations to the public. I am very pleased that CSU's annual evaluation of new teacher performance demonstrates that this rigorous approach is paying off. Nearly 90% of school administrators in the most recent (2003) survey rated CSU-prepared first-year teachers to be either well- or adequately-prepared to know and understand the subjects of their curriculum at their grade levels. Our goal, however, should be to do even better.

I believe that good teachers are critical to improving public education at all levels. CSU's programs, particularly the multiple subject credential programs for elementary school teachers, require that students already meet proficiency standards when they begin the program. These proficiency tests ensure that those pursuing teaching degrees are knowledgeable in the elementary school curriculum.

CSU is also rapidly expanding the number of qualified teachers in the state. Over the past three years, there has been a 45% increase in the number of new credentials recommended. As a father of children with special needs, I know how scarce the resources are for teachers who are qualified to perform IEP's and other services for youths with learning disabilities. I'm very gratified that CSU in 2002-03 increased the number of special ed teachers by 30% over the previous year, and in fact was responsible for producing 66% of state's total teachers with special education credentials that year. My goal is to continue that progress and to help promote similar gains where other shortages exist, particularly among math and science teachers.

With regard to nursing programs, again I am encouraged by the progress that CSU has already made, and I look forward to participating in the expansion of this effort. Already thirteen of the fourteen campuses with BSN programs are fully subscribed, including programs that accept freshmen and community college transfer students who intend to major in nursing. Seventeen campuses offer RN – to – BSN programs, and thirteen campuses offer the MS program in nursing. Given the health care needs in California, it is of course critical that this program continue to expand. At present, I understand that ten campuses have plans to add or expand nursing programs, and as a Board member I would help to support that effort.

The greatest challenge that we will face in terms of expanding the nursing programs is that it is difficult to compete with professional nursing salaries in order to attract good Nursing professors to the campuses. Likewise, accreditation rules require such low student-faculty ratios that it is difficult to satisfy these standards within the tight fiscal constraints of the State. Because of these issues, and the difficulty of actually monitoring the success of nursing graduates, it will be important for the CSU to form and sustain partnerships with health-care providers who can subsidize and evaluate these programs.

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As a Trustee, much of my monitoring of the success of these programs would be based on anecdotal evidence from my own visits to the campuses, from letters I receive from concerned citizens, and from reports of CSU staff. I plan to visit all of the campuses, to continue my practice of responding to all constituent mail, listen to community advisory boards and alumni of the CSUs, and evaluate campus reviews and other reports prepared by staff. I intend to review the facts and statistics carefully. Although I am impressed by the staff and its judgment, I have studied and taught public policy with an emphasis on quantitative analysis, and so I also plan to bring independent analysis to these issues.

Question 3. *As part of the 2004-05 Budget process, CSU negotiated an agreement with the Governor on a funding compact that envisions student fees rising on an annual basis. What do you believe should be the key features of a student fee policy for CSU students? How should the CSU Board of Trustees balance a university fee policy that provides students and families with cost predictability from year to year, and provides the university with a stable stream of resources?*

The Budget Compact was an attempt to normalize a process in which historically budgeting has been difficult and students have been subjected to large and unexpected tuition hikes. Two-thirds of a student's education at a CSU is subsidized by the State. In budgeting for the coming school year, the University needs to have some certainty about the amount that will be allocated so that it can maximize admissions. At the same time, students often have very limited means and they need to know that when they commit to attend a CSU, they will not have to worry that they will have to abandon their degree because of the cost. I am committed to ensuring that any increases in student fees would be gradual, moderate, and predictable; that students and their families are given early notice of any anticipated hikes, and that for those with limited means, we ensure that there is state, federal, and/or institutional financial aid available to ensure that they are still able to attend the school of their choice. I believe that the Compact advances this goal. I also believe that the Compact is only a floor. CSU, the Trustees, and the legislature must continue to push for larger financial support and lower student fee increases.

Question 4: *Are there financially needy CSU students who are eligible for state grant aid but do not receive a Cal Grant or a State University Grant? If so, what financial aid policies should the Board of Trustees pursue to increase the number of financially needy CSU students who receive some form of financial assistance? What have been the effects of state reductions in CSU Institutional financial aid in light of recent student fee increases?*

I have contacted the Chancellor's office in order to get specific responses to your questions. Based upon CSU records, in the last academic year (2003-04), more than 208,000 CSU students received over \$1.5 billion in financial aid from various sources. Some eligible financially needy CSU students, however, may need more aid because they do not receive either a Cal Grant nor a State University Grant.

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Based upon current projections for 2005-06, approximately 109,500 CSU students will be eligible for a State University Grant next year. However, funding is available for only 101,200 students. While this represents an increase of 2,700 grants over the previous year, it is not enough to cover all needy and eligible students. I look forward to working with the California Student Aid Commission and others to address this issue.

Likewise, the State has not been able to provide enough funding for the Cal Grant programs to meet the needs of every eligible student. To ration available funding, the State has restricted the Cal Grant Entitlement Program for California Community College transfers to students under the age of 24. Students 24 or older may apply for a Competitive Cal Grant, but the State has limited the total number of these Competitive Cal Grants to 22,500 per year.

While I would need some additional time before I could provide a comprehensive list of what actions the Trustees should take, I think we should at least consider the following:

- Remove the age restriction on the Cal Grant Entitlement Program for California Community College transfer students.
- Increase the number of Competitive Cal Grant Awards per year.
- Provide fee coverage for all Cal Grant B Entitlement freshman recipients.
- Convert the Cal Grant Program to a campus-based program administered by colleges rather than by a state agency.
- Continue to ensure that limited grant funding is targeted to those students from families least able to meet their educational expenses.
- Give students incentives to assume larger unit loads, thus reducing the time to degree.
- Advocate for increases in the maximum amount of the Federal Pell Grant and appropriations to fully fund the program that serves as the foundation of federal student aid programs.
- Promote opportunities and financial aid funding for year-round enrollment so that campuses are fully utilized and students can complete their degree programs in a shorter time frame.
- Seek increases in other federal grant funding for the CSU, including the Supplemental Educational Opportunity Grant (SEOG) and work study.

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While I appreciate the financial constraints facing the State, reductions in CSU institutional financial aid have had a direct and negative effect on the ability of the state to provide an education to every qualified person in the State, and thereby fuel the economic engine of the State. Without adequate funding, students must now rely more heavily on student loans and student employment, slowing their advancement and increasing their debt upon graduation.

Question 5: *More than half of all incoming CSU freshmen require English and/or math remediation during their first year at the university. What overall strategies and policies should the State pursue to improve the academic preparation of students entering the university? What should CSU's role be in these strategies?*

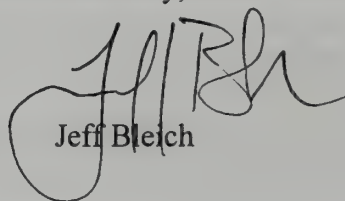
I learned of this statistic upon first joining the Board, and think it is a disturbing indictment of the quality of secondary education in California. Although the Trustees previously adopted a remediation program in 1998, the proficiency rate in English has remained relatively flat since that time. While the proficiency rate in mathematics has increased significantly since 1998, moving from 46% to 63%, some of that increase is due to changes in definitions of proficiency, and that trend appears to be flattening now as well.

To help change this trend, we need to start ensuring that students are ready sooner. I am pleased that CSU has entered into a partnership with the California Department of Education and the State Board of Education to implement an Early Assessment Program (EAP). The goal of this program, which was launched last spring is to ensure that college-bound high-school graduates are evaluated early so that they know what they need to do in order to have the English and mathematics skills expected by the state university.

In conjunction with the EAP, CSU teacher education faculty sponsor reading institutes and are now developing materials through which high school teachers can improve their skills in helping students to read and write effectively. I believe that the Trustees should devote themselves to studying and improving this program. Likewise, it will be crucial for the State to support this program as well, including the California Standards Test in 11th grade English/Language Arts and mathematics.

I hope that these responses give you some preliminary answers to your questions and that I will have the chance to elaborate further during the course of the confirmation proceedings.

Sincerely,



Jeff Bleich

JLB:mjg

1066277.1

January 11, 2005

Ms. Nettie Sabelhaus
Rules Committee Appointment Director
Room 420
State Capitol
Sacramento, CA 95814

Dear Ms. Sabelhaus:

I am pleased to offer my responses to the five- (5) questions posed by the Rules Committee as a part of the confirmation hearing on my appointment as a Trustee of the California State University system.

To facilitate your review of my responses, I shall first list your question followed by my comments:

Question #1. Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as a member of the California State University Board of Trustees?

Response: For nearly (30) years, I have been a part of the CSU family. Throughout my career, I have been committed to the goal of preserving fair and equitable access to the CSU as well as the other segments of the higher education community.

While my efforts have been reasonable successful, there remains much work to be done in several areas including but not limited to (a) improving graduation rates, (b) reducing the need for remediation instruction at the university level, (c) improving community college transfer rates, and (d) establishing student fee policy which is predictable, affordable and balanced with appropriate concern for an effective "needs based" financial assistance elements.

I would see the above items (a-d) as my goals during the next few years.

Question #2. CSU plays an important role in preparing a skilled workforce. Two critical areas of need are teacher preparation and nursing education where workforce shortages have been critical for years. What is CSU doing to address these workforce preparation needs? How are you monitoring the success of these and other efforts to meet the skill and knowledge requirements of the California labor market?

Response: Throughout much of its' history, the CSU has placed a high priority on helping to prepare the broad range of professionals needed to sustain and enhance the quality of

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life for all that live in this state. As members of the legislature are no doubt aware, Annually the CSU produces nearly two thirds of all teachers produced in California. While these numbers are impressive, what is equally impressive is the quality of our teacher education graduates and the fact that they are rated so highly by administrators throughout the state.

Each CSU campus has a high standard for admission to and completion of its' teacher education program and each campus operates a Teacher Recruitment Project which is designed to maximize collaboration between local schools and community colleges to address local needs and existing teacher shortages.

Additionally, CSU Schools of Education are fully engaged, with K-12 schools in their area, in programs designed to upgrade the professional qualifications of both teachers and administrators. In my view, no CSU program is more important than the preparation of highly qualified teachers particularly in areas such as mathematics, science and special education.

As member of the CSU Board of Trustees, I shall do my utmost to ensure that the CSU continues to place a high priority on all of our teacher preparation programs in terms of both quantity and quality. Additionally, I am pledged to work for the expansion of existing programs which seek to monitor and evaluate the effectiveness of teacher preparation activities and to seek the implementation of new programs when and where they are needed.

With regards to nursing education, presently fourteen (14) of the twenty three (23) CSU campuses offer generic bachelor level programs for freshmen and community college transfer students who wish to major in nursing. All but one of these programs is fully subscribed. Further thirteen (13) campuses offer the masters level program in nursing. I am also informed that ten (10) CSU campuses currently have plans for new and/or additional nursing programs.

Clearly, we recognize the need for additional efforts in this critical area but we are also mindful of challenges such as program costs, adequate facilities and student placement opportunities in establishing and maintaining new quality nursing education programs.

To enhance our efforts in the production of qualified nurses, the CSU is increasingly turning to partnerships with healthcare providers to assist in the provision of resources for training, education, evaluation and other forms of support for nursing education. Presently, sixteen (16) campuses are involved in such partnerships.

Turning now to the second part of question 2; although I have historic knowledge of many of the activities in the CSU and thus a degree of comfort in discussing them, some questions which require more contemporary knowledge of system practices are areas in which I am hesitant to offer opinions.

As a newly appointed trustee, I have been informed that the CSU, through its' system and campus advisory board processes, constantly seek community based information from business and community leaders as well as leaders in the arts, entertainment, sciences, education and technical fields regarding present and future needs throughout the state. Should I be confirmed I am sure that at a future date, I will be better able to respond to this area of inquiry.

Question #3. As a part of the 2004-05 budget process, CSU negotiated an agreement with the Governor on a funding compact that envisions student fees rising on an annual basis. What do you believe should be the key features of a student fee policy for CSU students? How should the CSU Board of Trustees balance a university fee policy that provides students and families with cost predictability from year to year, and provides the university with a stable stream of resources?

Response: In my response to question #1, I stated that I believe a CSU student fee policy should be one which is "predictable, affordable and balanced with appropriate concern for an effective needs based financial assistance element"

In the best of all worlds, consistent with the intent of the Master Plan, the state should provide a level of funding to the CSU to handle student access and instruction to all students who meet the basic qualifications for admittance to the university. I fear however that the best of all worlds has not often existed in the past and will not likely exist in the near future.

For nearly a decade, compacts have to an extent, determined the CSU student fee policy. In lean budget years, these compacts have served to buffer drastic reductions in General Fund support for the CSU. In those times when the coffers of the state were overflowing, the legislature has "bought out" proposed increases in student fees.

The dual effects of these compacts and Legislative "buy outs" of CSU proposed student fee increases has been the imposition of student fees in a sporadic and unpredictable manner thereby causing a high degree of frustration on the part of trustees, students, their families and members of the legislature.

There are no easy solutions to this historic issue but I believe a good beginning would be for the Legislature, the Governor and CSU Trustees to agree that student fees should support no more that one third (1/3) of the costs of a students' education. Such an agreement might well eliminate the need for the trustees to set student fees in a manner, which does not use fees as a balancing factor in covering shortfalls in the systems' annual budget.

Question #4. Are there financially needy CSU students who are eligible for state grant aid but do not receive a Cal Grant or a State University Grant? If so, what financial aid policies should the Board of Trustees pursue to increase the number of financially needy CSU who receive some form of financial assistance? What have been the effects of the State reduction in CSU institutional financial aid in light of recent fee increases?

Response: As a new trustee, I have not yet mastered all of the intricacies of the systems' total grant programs. I have however been informed that there are needy CSU students who are eligible for Cal or State University grants but do not receive one or both of them.

I am further informed that based upon estimated enrollments and State University Fee income for 2005-06 approximately 104,500 students will be eligible for State University Grants against a funding availability, which can support only 101,200 students.

With respect to the Cal Grant program, it appears that due to the current fiscal condition of the state, funding will not be made available to the CSU to cover the needs of every eligible student.

Given the above, it is clear that there are financially needy CSU students eligible for Cal Grants but who have not and will not receive them in 2005-06. As to future policy initiatives the trustees should consider; I am certain that there are a variety of new policy prescriptions which, if implemented, could eliminate many of the current needy student grant problems, but I hesitate to offer any specific recommendations until I have had the opportunity to more fully understand the nature of the problems and think through what might be effective policy alternatives.

Finally, complete knowledge of system, state and federal grant programs is not required to intuitively know that a reduction in available financial assistance coupled with unpredictable fee increases will drive needy students to seek more student loans, seek work study opportunities or other forms of employment, delay their academic progress and perhaps negatively impede their academic performance. None of these predictable policy outcomes are in the best interest of our state or nation.

Question #5. More than half of all incoming CSU freshmen require English and/or math remediation during their first year at the university. What overall strategies and policies should the State pursue to improve the academic preparation of students entering the university? What should CSU's role be in these strategies?

Response: The State through the Department of Education has already begun a number of interventions which have the potential of producing more students who are academically

prepared to enter and succeed in the university. Among the most recent intervention strategies is a collaborative effort with the CSU called the Early Assessment Program. This program was initially implemented in the spring of 2004.

The goals of the EAP program, which is voluntary on the part of students are to inform students, their teachers, their parents and CSU campuses how well prepared 11th grade students are to handle university studies and where they stand with respect to completing the required course pattern for acceptance into the university.

The EAP has the additional advantage of identifying student inadequacies early enough so that some effort can be made to overcome them in the 12th grade. While I recognize the value of learning interventions which are driven by assessment models, I would observe that this police choice, as the surest way to get us out of our education malaise might be misguided.

Assessment policies, I believe, are expected to accomplish a number of purpose among which are the following: (1) providing information about the status of the educational system, (2) aiding in instructional decisions about individual students, (3) supporting the development of curricular coherence, (4) enhancing student performance, (5) provide a platform to under gird changes in the teaching/learning process, (6) establishing a baseline for holding educators accountable for student performance and (7) certifying student mastery of a certain level of academic achievement.

Assessment models however fail to take into account the fact that school reform, if it is to have long lasting effectiveness, must be in accord with broader social reforms.

The populations most in need of remediation in California are black, browns and non-affluent whites; groups growing rapidly in numbers in our populations. They exhibit educational disadvantages different from what we encountered in pass generations. But, it is in the area of social reform that the I believe we have the best promise for overcoming the effects of a century of poverty, neglect, social and economic separation and educational discrimination. In my view, only the state can position the needed social reforms either as non-threatening to those well served by the existing system or as beneficial to them and those who are poorly served, at least equally

In addition to all of the attention, which the state has given to assessment models, there needs to be a new level of discussion about the aims of education and the expected functions of our schools. Aside from a general acceptance of the notion that K-12 education serves the common good and is necessary to achieve both positive social values and individual effectiveness as parents, teachers and citizens, I believe it would be good to have a new round of discussions, with all invested parties, focused on the following: (a) what students should learn regardless of their color or class, (b) what role should

character development have in the K-12 sector, (c) how should our educational sectors deal with the strong currents of pride and prejudice in our society, (d) how does the organization of schools enhance or distract from the learning experiences of our children and (e) how are universities preparing teachers and administrators for effective roles in the new California.

The conversation which I have outlined above is one which the CSU should be deeply involved in because of our commitment to helping to fashion a new agenda for student success and I look forward to being a part of this much needed conversation.

Sincerely,



Herbert L. Carter

CALIFORNIA LEGISLATURE

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APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

December 22, 2004

Carol R. Chandler
9337 East South Avenue
Selma, CA 93662

Dear Ms. Chandler:

As you know, the Senate Rules Committee will conduct a confirmation hearing on your appointment as trustee of the California State University (CSU).

Following are questions we would like you to address in writing prior to the hearing. The answers to these questions will help us conduct a more informed discussion with you at the hearing. Please have this information in our office by January 14, 2005.

Questions:

- 1. Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as a member of the California State University Board of Trustees?*
- 2. CSU plays an important role in preparing a skilled state workforce. Two critical areas of need are teacher preparation and nursing education where workforce shortages have been critical for years. What is CSU doing to address these workforce preparation needs? How are you monitoring the success of these and other efforts to meet the skill and knowledge requirements of the California labor market?*
- 3. As part of the 2004-05 Budget process, CSU negotiated an agreement with the Governor on a funding compact that envisions student fees rising on an annual basis. What do you believe should be the key features of a student fee policy for CSU students? How should the CSU Board of Trustees balance a university fee policy that provides students and*

families with cost predictability from year to year, and provides the university with a stable stream of resources?

- 4. Are there financially needy CSU students who are eligible for state grant aid but do not receive a Cal Grant or a state university grant? If so, what financial aid policies should the Board of Trustees pursue to increase the number of financially needy CSU students who receive some form of financial assistance? What have been the effects of state reductions in CSU institutional financial aid in light of recent student fee increases?*
- 5. More than half of all incoming CSU freshman require English and/or math remediation during their first year at the university. What overall strategies and policies should the State pursue to improve the academic preparation of students entering the university? What should CSU's role be in these strategies?*

Please direct your responses to Nettie Sabelhaus, Rules Committee
Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your assistance.

Sincerely,



DON PERATA

DP:ns:cm

Carol R. Chandler, Appointee
California State University Board of Trustees

Responses to Questions from Senate Rules Committee:

1. Statement of Goals

- **Increase the College Going Rate in the Central Valley**

A recent public policy report found that the Central Valley has the lowest number of college graduates in our state. The California State University (CSU) system provides access to higher education for valley students at three local campuses, but our students need to prepare, qualify, seek financial aid, and receive encouragement to apply. As a Trustee, I would like to plant the seeds of success through higher education early by increasing mentoring and tutoring by college students, improving the transfer rate from community colleges, and working toward better retention after admission. A well-educated workforce in the state and especially in Central California leads to greater economic development and increased earning power.

- **Provide Capacity to Accommodate Tidal Wave II**

Increased enrollment demand is evident in the number of applications to CSU campuses for fall 2005. I believe we need to expand and better utilize campus facilities to accommodate the anticipated influx of students known as Tidal Wave II. The California Postsecondary Education Commission (CPEC) predicts that 714,000 new students will apply to college in California by 2010. Some possible solutions are increased class size for introductory courses and combined online and classroom course offerings, as well as satellite campuses and expansion of current campus enrollments. Preserving access to higher education necessitates increasing capacity.

- **Decrease Time to Degree**

We need to change the paradigm of higher education to address the needs of working adults who take longer to achieve a degree than the traditional four-year full time student. Offering more classes in the evening and on weekends, decreasing the number of unnecessary units for a bachelor's degree, and providing more work-study opportunities are all solutions to be explored and encouraged. Reducing the need for remediation and making advanced placement courses count are added strategies to reduce the unit load.

- **Improve Transfer Rates and Articulation**

The community colleges provide entry to higher education for a tremendous number of people. I would strive to increase the transfer rate of community college students by working to achieve a more seamless transition. A

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common course numbering system would insure better articulation and is a worthy goal for the academic senate.

- **Budgetary Oversight**

One of the most important duties of a university trustee is budgetary oversight. The fiduciary responsibility offers an excellent opportunity to implement cost cutting measure and channel funds to programs that have direct benefit to students.

- **Become an Advocate for CSU**

My final goal is to be a strong voice for the positive impact that CSU has upon the economy of our state. I would like to advocate for our system in Sacramento and Washington, DC, as well as with business leaders and the public. Investing in higher education is a win-win for our government, but private support and endowments are also essential to maintain access, affordability and quality for students who will be the leaders of tomorrow.

2. Workforce Preparation

Teacher preparation and recruitment have always been strong focuses for the CSU system. Shortages in math, science and special education teachers are especially troubling to me, and I applaud individual campus "Teacher Recruitment Projects" using lottery funds to address local priorities. Maintaining high standards for admission and credentialing is also key to producing capable teachers to meet the pressing need in California. I would like to work to support the excellent programs already in place, reward the campuses that increase teacher education enrollment, and explore the possibility of awarding credentials after only four years of intense preparation, instead of the current five years required.

In the Central Valley, as in the rest of California, we have a critical shortage of nurses. CSU Fresno and many other CSU campuses are at full capacity because of staffing and space constraints. My goal is to encourage greater collaboration between hospitals and nearby campuses to provide funding and increased training facilities. These partnerships are fundamental to meet the needs of the Central Valley since 85% to 90% of the nursing graduates are employed at local hospitals.

As an Ambassador for CSU Fresno, I have been part of the network of community advisory boards that meet to give input to our campus presidents. These boards provide valuable information about regional and statewide workforce requirements. I understand that as a Trustee, I will have the opportunity to review the academic master plans and match them with current

workforce demands from the business sector.

3. Student Fee Policy

Raising student fees to alleviate financial shortfalls is one of the most difficult decisions for a University Trustee, and it must be done as a last resort to balance a budget. As a member of CPEC, I advocated for a student fee policy that would be gradual, moderate and predictable so students and their families could plan and save for higher education. I also believe that the master plan formula of up to one-third of the cost of education should be a ceiling for student fees, not a goal. Finally, increasing financial aid is essential, and I would diligently pursue avenues to make needy students aware of grants, scholarships, and loans to offset the fee increases. The Compact with the Governor will bring funding stability and hopefully provide increased access and improved instruction for our students.

4. Financial Aid

It is my understanding that State University Grants and Cal Grants are not sufficient to provide financial aid to all eligible students. Increased student fees will generate more funds for the State University Grants, but these grants only cover fees and not books, supplies and living costs.

As a Trustee, I would like to encourage more work/study opportunities through federal and state grants. Also, an increase in Cal Grant funds to students who enroll in 15 or more units per semester would reduce the time to degree. Streamlining the granting system by eliminating the Student Aid Commission would cut costs and allow campuses to distribute funds to the most needy students at a one stop location. I would also advocate for increased federal funds to provide Pell Grants for students who attend summer session to shorten their time to degree and maximize the utilization of campus facilities.

When student fees are raised and financial aid is decreased, the most needy students suffer hardships that can cause them to drop out of college. The necessity for employment, reliance on student loans, and decreased time for classes and study can become burdens too difficult to bear. Increased financial aid from government, industry, scholarships and honors programs are essential to prevent the dire consequence of reducing access to higher education in California.

5. Remediation Strategies

Decreasing the need for remediation for CSU freshmen is a high priority for me as a Trustee. Student must pay in time and money to attend remedial classes that do not count toward their degree.

I am greatly encouraged by the Early Assessment program (EAP) which implements testing of math and English proficiency for high school juniors. Those who are deficient have an opportunity to remedy this during their senior year by taking a specially designed English course or an interactive online math program. EAP also includes high school teacher training given by CSU faculty which is a key strategy to improve skills and methods to improve academic preparation.

In addition, I would like to expand EAP to include middle schools, since students at that level need encouragement and direction to begin on a path to college preparation. Also, counselors in middle and high schools must be apprised of this college readiness assessment tool and advise their students accordingly.

CALIFORNIA LEGISLATURE

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APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA

CHAIRMAN

December 22, 2004

George G. Gowgani, Ph.D.
2571 South Windsor Boulevard
Cambria, CA 93428

Dear Dr. Gowgani:

As you know, the Senate Rules Committee will conduct a confirmation hearing on your appointment as trustee of the California State University (CSU).

Following are questions we would like you to address in writing prior to the hearing. The answers to these questions will help us conduct a more informed discussion with you at the hearing. Please have this information in our office by January 14, 2005.

Questions:

1. *Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as a member of the California State University Board of Trustees?*
2. *CSU plays an important role in preparing a skilled state workforce. Two critical areas of need are teacher preparation and nursing education where workforce shortages have been critical for years. What is CSU doing to address these workforce preparation needs? How are you monitoring the success of these and other efforts to meet the skill and knowledge requirements of the California labor market?*
3. *As part of the 2004-05 Budget process, CSU negotiated an agreement with the Governor on a funding compact that envisions student fees rising on an annual basis. What do you believe should be the key features of a student fee policy for CSU students? How should the CSU Board of Trustees balance a university fee policy that provides students and*

families with cost predictability from year to year, and provides the university with a stable stream of resources?

- 4. Are there financially needy CSU students who are eligible for state grant aid but do not receive a Cal Grant or a state university grant? If so, what financial aid policies should the Board of Trustees pursue to increase the number of financially needy CSU students who receive some form of financial assistance? What have been the effects of state reductions in CSU institutional financial aid in light of recent student fee increases?*
- 5. More than half of all incoming CSU freshman require English and/or math remediation during their first year at the university. What overall strategies and policies should the State pursue to improve the academic preparation of students entering the university? What should CSU's role be in these strategies?*

Please direct your responses to Nettie Sabelhaus, Rules Committee
Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your assistance.

Sincerely,


DON PERATA

DP:ns:cm

Question 1)

Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as a member of the California State University Board of Trustees?

As a Trustee, my primary goal, of course, is to make sure that the California State University system remains not only the largest higher education system in the world, but also the finest. To achieve that goal, I will take the following steps:

- A) Secure a well educated and highly trained work force for California's number one modern industry: agriculture.

When I sought this position from the Governor, distinguished California citizens and organizations wrote letters of recommendations on my behalf making the argument that agriculture must have a stronger representation on the CSU Board of Trustees, something that has been lacking for quite some time. The Golden State is by far the number one producer and exporter of agriculture in the United States, with farm income for 2005 expected to top \$30 billion. It is my objective to review the agriculture curriculum in our system to make sure that it meets our great state's future needs and demands.

- B) Develop partnerships with industry.

My three decades of experience in the CSU system convinced me that the state cannot always provide schools with all the resources they need. During my tenure as a professor and department head, I always felt that the state will provide schools with minimum financial support but to truly meet the margin of excellence we needed to find innovative sources of alternative funding. To that end, I pursued many industry leaders in an effort to develop education /industry partnerships and joint ventures, an effort that proved not only fruitful for my university department, but now serves as a model for the entire agriculture industry. As such, I intend to be at the forefront of capital campaigns for the CSU system.

- C) Improve relations with state community colleges.

In my mind, the relationship between the CSU and community colleges in the state of California can, and must, be improved. The recent changes that the CSU Board of Trustees have made are a major step in the right direction, however there is still much work to be done. We need better articulation and clear guidelines for students who are preparing to transfer to a CSU so that they can complete their degrees in a timely manner.

- D) Foster timely graduation.

Despite the tireless efforts of educators and administrators, CSU students are not graduating "on time." I feel the average number of years students spend getting their degrees can be significantly shortened by introducing closer student advisement, more flexible curriculums, changes in class scheduling, reduction of unnecessary units and better communication with parents. As someone who not only graduated from a CSU but also taught and administrated, I feel I am very well equipped to help deal with this situation.

E) Improve relations with high schools.

I believe far too many of CSU's students coming directly from high school need remedial education. I want to see CSU reach out to high school teachers and advisors and aid them in assessing what students need to consider when debating whether to attend a community college before a CSU.

F) Demystify resource allocation.

Faculty and staff are constantly questioning resource allocation. It is my goal to give them assurance that they are not being ignored and take the time to explain that resources are spent where they are most needed for each campus.

G) Improve morale among CSU faculty and staff.

Understandably, the morale among faculty and staff is not high, most notably because their pay increases have not kept up with the cost of living. I think it would benefit them to know that a Trustee has been in their place (when times were even worse) and understands their feelings.

Question 2)

CSU plays an important role in preparing a skilled state workforce. Two critical areas of need are teacher preparation and nursing education, where workforce shortages have been critical for years. What is CSU going to address these workforce preparation needs? How are you monitoring the success of these and other efforts to meet the skill and knowledge requirements of the California labor market?

Indeed, CSU plays a critical role in establishing a skilled workforce for our state, and addressing shortages, in whatever industry they may be, is of utmost importance to me. As someone who chose education as their lifelong career, the question of how to bolster the number of teachers in California who passed through the CSU system is one close to my heart. While CSU produces over 60% of California's teachers and leads the state in recommending new teachers for first credentials, various factors (i.e. class size reductions, an increase in K-12

students and retiring baby boomers) have caused a shortage that is projected to peak in 2012-13 with a need for 52,000 new teachers. This is something that clearly must be addressed. CSU must strengthen outreach efforts including its highly successful Teacher Recruitment Project (which is funded by statewide lottery funds) and non-traditional programs such as internships. Additionally, CSU must find creative new ways to encourage talented young people to choose education as their career path. Additionally, this is another area that improving CSU relations with high school student counselors can be of assistance, working with them to make early identification of students who would be well suited to becoming teachers, specifically in the areas of math and science where demand is strong. In terms of quality assurance, CSU leads the nation with some 89% of school administrators in 2003 judging CSU prepared teachers in their first year to be well prepared.

In terms of nurses, most of CSU's 23 campuses already offer programs related to healthcare, something that can be put under review for expansion. In fact, 17 campuses already offer RN to BSN programs, 13 offer MS in nursing and many have plans for new programs. For 16 of these campuses, partnerships with local healthcare providers (offering everything from use of their facilities to financial support) have proved most fruitful in surmounting the challenges of training additional nurses. CSU closely monitors the success of their graduates in several ways: 1) program reviews; 2) community advisory boards; 3) review of campus master plans; 4) informal input from the local, regional and national leaders and new media.

Of course, issues and challenges remain for CSU including addressing the question of adequate pay for nurses, salary requirements for well qualified nursing professionals, low-student faculty ratios mandated by accreditors and lack of staff required to provide training and supervision needed by nursing students. These are issues that I look forward to thoughtfully addressing with the Board.

Question 3

As part of the 2004-05 budget process, CSU negotiated an agreement with the Governor on a funding compact that envisions student fees rising on an annual basis. What do you believe should be the key features of a student fee policy for CSU students? How should the CSU Board of Trustees balance a university fee policy that provides students and families with cost predictability from year to year, and provides the university with a stable stream of resources?

California has an unmatched system of public higher education. Both my daughter and I are products of CSU and we are very proud of the education that we have received. I very much want to preserve that same access for deserving young men and women so that they too can reach their dreams.

Recent surveys clearly indicate that the cost of education in CSU is still one of the lowest in the nation. I feel that one-third student support and two-thirds state support is a fair ratio for determining student fees. I also feel that any increase in fees should be accompanied by state, federal and institutional financial aids. The Board of Trustees recent fee recommendation is consistent with the Governor's compact agreement that provides early notification and predictability for any fee increases.

Question 4

Are there financially needy CSU students who are eligible for state grant aid but do not receive a Cal Grant or State University Grant? If so, what financial aid policies should the Board of Governors pursue to increase the number of financially needy CSU students who receive some form of financial assistance? What have been the effects of state reductions in CSU institutional financial aid in light of recent student fee increases?

Indeed, there are financially disadvantaged students in the CSU system who are eligible for state aid but do not receive a Cal Grant or State University Grant, two programs that focus on covering only mandatory statewide fees and address only the neediest students. And while both programs help many eligible students each year, neither has been able to meet the demand for assistance.

There are many things that the CSU Trustees can do to help additional students in need. For instance, removing the age restriction on the Cal Grant Entitlement Program for California Community transfer students (open to only those under 24), and increasing the number of Competitive Cal Grants awards above the current level. I also support converting the Cal Grant program to a campus-based initiative (similar to the Pell Grant Entitlement federal program) that could be run by individual colleges rather than the state, saving thousands of dollars that could be reallocated to the students. With regard to the State University Grants, I believe that we should reward enrollment in larger unit loads, which would decrease the time it take to finish a degree, thus saving money at the campus level.

I also believe strongly that the Board of Trustees can and should persuade the California Congressional delegation that our students deserve more support from the federal government. Increasing the maximum amount of Federal Pell Grants and appropriations should be vigorously pursued.

In light of student fee increases and reduction in financial aids, our students have no other choice than to lessen their unit loads while increasing their employment hours and their student loans. This is most unfortunate.

Question 5

More than half of all incoming CSU freshmen require English and/or math remediation during their first year at the university. What overall strategies and policies should the state pursue to improve the academic preparation of students entering the university? What should CSU's role be in these strategies?

In fall 2003, a shocking 58% of all freshmen were required to enroll in remedial education. This is unacceptable. To address this issue, CSU entered into a partnership with the Department of Education in the spring of 2004 called Early Assessment Program (EAP). The goal of this joint venture is to make certain that college-bound students have the mathematics and English skills expected by the CSU. In their junior year, students are tested (through a voluntary portion of the California Early Standards test that is required of all public school students) to assess their academic fitness and college readiness. Armed with the results, high school counselors and parents can use the information to provide students with additional academic preparation in the senior year. EAP even offers special reading and writing classes and interactive online mathematics programs to seniors who need them. EAP is also actively developing training materials to give teachers the tools to better help students read and write effectively.

While EAP is new, I believe it is a giant step forward. It allows students, their teachers, their parents, and the CSU to know how well prepared the 11th graders are for university level work.

January 11, 2005

VIA HAND DELIVERY

Senator Don Perata
Chair Senate Rules Committee
State Capital, Room 3113
Sacramento, CA 95814

***Re: Pending Appointment - Board of Trustees, California
State University***

Dear Senator Perata and Members of the Senate Rules Committee:

Thank you for this opportunity to provide you with additional information about my interest in serving on the Board of Trustees for the California State University. I acknowledge receipt of your letter, which set forth questions to respond by January 14, 2005. I provide my responses below. In addition, under separate cover, in December 2004, I also provided additional information, including my resume and biography for your consideration.

Please contact me if I may provide additional information for you prior to the hearing before the Senate Rules Committee. Thank you for your consideration.

QUESTIONS FROM SENATE RULES COMMITTEE:

Question 1. Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as a member of the California State University Board of Trustees?

I am very excited about serving as a member of the Board of Trustees. I attended my first meeting in July 2004. I believe all constituent groups would state that I am an engaged trustee, I ask good questions, and I have already demonstrated leadership on the board of trustees.

As a member of the Board of Trustees, I see my role as a fiduciary on behalf of all Californians in monitoring and providing oversight to what is the largest system of

higher education in the nation. If confirmed for appointment, the following are my primary goals:

- (1) To protect recruitment and access to all Californians;
- (2) To improve retention and graduation rates;
- (3) To increase transfer rates of community college students,
- (4) To reduce remedial education needs;
- (5) To increase alternative funding opportunities,
- (6) To increase academic programs which provide direct impact to California's working economy, and
- (7) To provide effective leadership on the Board of Trustees.

I address each below.

1) Protecting Recruitment and Access to All Californians.

California enjoys its status as the fifth largest world economy. It also can boast being the most diverse state in the nation in terms of the state's ethnic and racial diversity. It is imperative in order to maintain our state's political and economic strength that it educate California's students. California has made significant gains to the recruitment and retention of "minority" students. California State University itself has experienced significant successes in recruiting and graduating "minority" students. However, we have a significant ways to go in order to achieve parity in education in comparison to the state's population.

As a member of the Board of Trustees, I have already reviewed the CSU's performance report, which shows statistics on the CSU performance, including recruitment and graduation rates of students. As a member of the Board of Trustees, I will ask questions concerning the recruitment and retention efforts, and will ensure that recruitment and access is protected for all students. In addition, I will encourage improved partnerships with K-12 and the California Community Colleges to attract and recruit more students.

I owe all of my successes to the quality education I received in college. As a person who is first generation college, like most of the students who attend CSU, I understand the value of higher education and the potential impact not only on the student and his or her family, but also on the community in which that person interacts. And, because one graduate makes such a tremendous impact on California's economy, it remains imperative that we recruit, retain and graduate as many students as we possibly can. Access is a must.

2) Improving Retention and Graduation Rates.

CSU students are diverse in age, ethnic and racial backgrounds, marital status, parent status, working status, and other background factors. Some students fall into

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what might be referred to as "traditional" students, i.e., they are 18 to 22 year olds, who attend full-time and graduate in four years. A majority of CSU students are 22- to 26 year-olds who are working and some have family responsibilities. These students do not take a full course load and thus take two and three years above the four-year traditional standard to complete their program.

In my capacity as a Trustee, I will work to improve the retention and graduation rates of all students. I will also work to defend campuses that are responsive to the class scheduling needs of working adults. I have visited some of these campuses already, including by way of example CSU Dominguez Hills. This small campus has a tremendous impact on the local community. Most of its students commute, and many take more than the traditional four years in which to graduate. The value of their education to their local and surrounding community, however, is invaluable. As a result, I will work to ensure that CSU campuses support the needs of their diverse student populations, including the majority of their students who work while attending the university.

3) Increasing Transfer Rates of Community College Students.

I feel fortunate to have served as a member of the Board of Governors of the California Community Colleges, after having been appointed by Governor Gray Davis. That service provided me with better background information on the operation of the California Community College system. I understand better its needs, its strengths and its weaknesses. I also understand the profile of the students who attend community colleges.

Community colleges meet several diverse needs, including the preparation of students to a four-year university. Many times, however, community college students get trapped in that system and do not transfer to a four-year institution such as the CSU. In partnership with CSU and UC, more students are transferring to a four-year institution, and as a member of the Board of Trustees, I place a high priority of increasing transfer rates of community college students to CSU campuses.

There are several reasons why transfer is important. One important reason is that the community college students tend to be a diverse student pool. We need to help ensure successful transition to a four- year university within the CSU. Another increasingly important reason is that it is cost effective to have students attend a community college to complete lower division courses. Given the economic needs of the CSU, it is helpful to have students complete their lower division classes at a community college.

There are also important needs of both the community colleges and CSU if transfer is to be successful. Too often students enrolled in community colleges present transcripts with courses that will not transfer. In other words, students take too many units. This is due in part to a lack of direction of the students, and possibly due to a lack

of counseling to assist with planning. Recently, the CSU and faculty academic senate have been working to define appropriate lower-division content by specific majors to improve transfer.

As a member of the Board of Trustees, I will continue to work with community colleges to help ensure partnerships for successful transfer into the California State University. This will ensure that students are prepared to transfer and that they can complete their bachelor's degree in a reasonably timely manner. Access is the key, and the community colleges are part of the answer to meeting the access need.

4) Reducing Remedial Education Needs.

As a parent of now a third year CSU student, I saw first hand the remedial needs of a local CSU with regard to entering students. Approximately one third of the students in my daughter's class were in need of some form of remedial education. And, while the need stems from a problem before the students arrive at the CSU, the CSU campus must expend resources to prepare those students to proceed with other classes. Math and English are critical skills for all university classes.

Many students graduate high school lacking in English, reading, writing and math skills. Students are tested in English and Math prior to entry, and the results are clear: far too many students require remedial education. These numbers alone reflect that additional partnerships are required between UC, CSU, California Community Colleges and high schools to better prepare students. In addition, the numbers also support the notion that the goal is not to preclude entry into college or to remove them out of the university, but rather to give them the tools for successful study at the university level.

After several years of study and conversation, the CSU is using the junior year high school exam to assess competence in English and mathematics. Students who possess the needed skills need not prove themselves again. Those students whose scores indicate a deficiency problem are advised to use their senior year in high school to correct the problems. In addition, the CSU is working directly with high school teachers to help them better overcome this problem. Partnerships are key to resolving this problem.

A related issue is services for students with disabilities. Many students in high school suffer from learning disabilities but due to a lack of resources or information, students are not tested and therefore are not diagnosed. By the time they reach college, they require further remedial work and in many instances again are not tested and therefore do not apply for services. Efforts to reduce the need for remedial education must also include working with the services for students with disabilities.

As a member of the Board of Trustees, I will work to help reduce the need for remedial education by promoting better partnerships with K-12 education and the

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California Community Colleges. I will also work to review the services for students with disabilities to assist in improving the need for remedial education. As noted above, partnerships are important to helping resolve these issues. Access into the university, however, should always remain a priority and we will need to explore ways to maintain these students in the system so that they may graduate from college.

(5) Increasing Alternative Fundraising.

California faces a financial dilemma. There are too many needs and too little money in which to invest. Public dollars can no longer be the primary source of funding for our campuses.

Academic institutions are still in the early phases of learning how to fundraise. Given the state's financial condition and the need for additional funding, as a member of the Board of Trustees I will work to increase fundraising from the private sector to support the CSU.

For only the past dozen years, campus presidents have been engaged in fundraising. Each campus is different, and some campuses are better at fundraising than others. Some of this is based on the age of the institution, the success of the alumni, and the wealth of the community. Some of it also simply based on the fact that academicians are still learning how to market the campuses and the services campuses provide to the greater community with an eye toward requesting funding.

Trustees can assist in capital campaigns, and in general through their business and personal contacts. We can hopefully open doors to corporate grants, and assist the campus development teams in promoting the campuses to attract donor dollars. As a member of the Board of Trustees, I will work with the campuses to improve fundraising.

6) Increasing Programs which Impact California's Working Economy.

The California State University issued an Impact Study Report in late fall 2004. A copy was delivered to each legislative office in early January. The report demonstrates that the university prepares the workforce in many sectors of the state's economy, including engineers, computer and information managers, agricultural growers and processors, nurses, public administrators, teachers, bio-technology, banking and insurance, and aerospace.

As a member of the Board of Trustees, I want to share the story of the California State University so that the public and our business leaders can appreciate what the university does to contribute to the economy. The CSU returns \$4.41 for every dollar the state invests. An investment in California's CSU is an investment for California's future.

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7) Providing Effective Leadership on the Board of Trustees.

I am excited about serving on the Board of Trustees not only because of the students CSU serves, but also because I know that my leadership can make a difference on the board. I have only served on the board a limited time. I listen, I read the materials and I ask questions. I have a keen passion for the issues and for education because of my background. I also have a unique ability to review and assess issues because of my legal experiences as an attorney. I urge you to confirm my appointment.

Question 2. CSU plays an important role in preparing a skilled state workforce. Two critical areas of need are teacher preparation and nursing education where workforce shortages have been critical for years. What is CSU doing to address these workforce preparation needs? How are you monitoring the success of these and other efforts to meet the skill and knowledge requirements of the California labor market?

Teacher Preparation.

As stated above, I owe my successes in life, if any, to my parents and family and to my education. As a child, I recall loving my teachers and because of that, I remember loving to learn. My parents also taught me to respect my teachers, because they would show me the tools to improve my life. Education is important to me, and I am happy to state that my youngest sister is a sixth grade teacher in the Elk Grove Unified School District. She lived with me when she was in college and in particular when she was participating in her teacher education.

The California State University continues to place a high priority on teacher preparation, with attention to both quality and quantity. The CSU is the only system in the United States that evaluates all their new teachers and reports to the public. In addition, some of our campuses, like CSU Northridge, participate in special studies on teacher preparation.

- 1) **Quality:** Our system-wide evaluation of new teacher performance continues to demonstrate that both our graduates and their employers value highly the teacher preparation offered by the CSU.
 - ★ Drawing on data from teachers at the close of their first year of teaching, and from their immediate supervisors, this quality assurance program is the only one of its kind in the nation. Some 89% of school administrators in the 2003 survey judged CSU-prepared first-year teachers to be either well- or adequately-prepared to know and understand the subjects of their curriculum at their grade levels.

- 2) **Quality:** Our campuses have high standards for admission and program completion, and continue to ensure that very well-qualified individuals are well prepared for this challenging and important career in California schools.
- * For example, CSU programs designed to prepare elementary school teachers ("multiple subject" credential programs) require a showing of subject matter competence at entry to the program. The exam by which students show competence, the CSET, tests baccalaureate-level knowledge in the fields of study that are included in the elementary school curriculum.
- 3) **Quantity:** CSU's continued focus on meeting the needs of the state has resulted in a 45% increase in the number of new credentials recommended over the last three years. The Board of Trustees has indeed made producing more teachers a priority.
- 4) **Quantity:**
- * Virtually every school district in the state needs more credentialed mathematics, science, and special education teachers – shortages CSU is addressing.
 - a. In 2002-03, CSU produced 12,798 teachers, 59% of California's total.
 - b. The 1,632 who received special education credentials in 2002-03 were 66% of the state's total production of teachers with these in-demand credentials. Of interest: the 2002-03 CSU production of special education teachers was 30% above the number that CSU produced in the previous year.
 - c. There are many specific teacher shortage areas in California's public schools. Some are widespread across the state (mathematics, sciences, special education) and some are more regional in nature (certain districts, such as very rural or urban).
 - d. The California State University has continued to place teacher education as one of the highest priorities for our campuses. Each campus operates a "Teacher Recruitment Project", funded by system-wide lottery dollars, designed to work with local schools and community colleges to meet local priorities and needs related to teacher shortages.
 - e. In addition, the CSU is working in partnership with the University of California to address the specific shortage areas of mathematics and sciences teachers in secondary school settings as specified in the Higher Education Compact agreement of 2004.

Nursing Education

1) Programs Offered:

- a. Fourteen campuses presently offer the “basic” or “generic” BSN program that accepts freshmen and community college transfer students who intend to major in Nursing to the BSN degree. All but one program is fully subscribed, meaning that not all qualified students who apply may be admitted, due to space/capacity constraints. Only the Bakersfield program is *not* at capacity, but that campus is close to capacity.
- b. Seventeen campuses offer RN – to – BSN programs whereby RN’s with community college-based ADN training may complete the baccalaureate in Nursing. All are open to CSU-eligible applicants.
- c. Thirteen campuses offer the MS program in Nursing.

2) Programs Planned:

- a. Ten campuses have plans (at various stages of the planning process) for new/additional nursing programs.

3) Program Problems / Issues:

- a. Meeting salary requirements for well-qualified Nursing professors is a continuing challenge.
 - b. Low student-faculty ratios [i.e., few students per professor], mandated by accreditors and necessary due to clinical education requirements, result in very high costs.
 - c. Campuses have continuing problems in identifying facilities and placements [in hospitals or similar] for clinical training for nursing students who enroll in B.S.N. programs. In addition, hospitals too frequently lack the staff required to provide the training and supervision needed by nursing students.
- 4) **Partnerships:** Partnerships are means whereby health care providers in local communities provide resources for training, education, and support for nursing education and training. Partnerships amount to a creative means to overcome barriers to the training of additional nurses.
- a. Sixteen campuses report partnerships. In survey responses, provosts referenced many kinds of support for students, faculty, facilities. Some

references were to in-kind support, and other references were to cash. Some references were to resources in one year, others across several years. Recognizing, then, that various resources are represented: provosts included more than \$38 million in resources in their partnerships reports (cash/in-kind/across more than one year). The largest partnership is between Long Beach Memorial and CSU Long Beach for \$15 million.

How Does CSU Monitor Other Efforts to meet the Skill and Knowledge Requirements of the California Labor Market

- 1) **CSU listens to constituencies statewide:** in fact, the Trustees serve an important function of bringing community needs and interests to CSU attention. The Chancellor meets with business leaders throughout the state on their needs.
- 2) **CSU campuses each have community advisory boards** – another ongoing and successful effort to stay in touch with regional and statewide needs and interests.
- 3) **Particular divisions / colleges / schools on CSU campuses have similar community advisors:** colleges of business listen to business leaders; colleges of the arts are in touch with local / regional arts communities; colleges of natural sciences and of engineering listen to local and regional leaders in technical fields; etc.
- 4) **These efforts to understand and to meet regional and state-wide needs culminate in campus academic program master plans**, which project the initiation of new degree programs into the future. These academic master plans are reviewed by the Board of Trustees annually.
- 5) **Campus program reviews** (including specialized accreditation program reviews) **include examination of the extent to which current programs meet the skill and knowledge requirements of the California labor market.**

Question 3. As part of the 2004-05 Budget process, CSU negotiated an agreement with the Governor on a funding compact that envisions student fees rising on an annual basis. What do you believe should be the key features of a student fee policy for CSU students? How should the CSU Board of Trustees balance a university fee policy that provides students and families with cost predictability from year to year, and provides the university with a stable stream of resources?

The issue of increasing student fees, in general, is one that triggers immediate concerns about access to education. Students in the CSU system tend to work, and tend

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to come from working class and lower income levels than other universities. As a result, whenever fees are increased, students feel the extra pinch and concerns are raised about their ability to continue with their studies.

The key features of a student fee policy should recognize that fees support a certain percentage of the total cost of education, while the state provides the balance of this cost. The Board of Trustees has reviewed proposals that discuss the allocation between students and the state as being between 25% to 1/3 of the total cost of education to be paid for by students and the remaining portion to be paid for by the state. No long term fee policy has yet been approved, although we saw the beginnings of such a plan in the compact negotiated between the CSU and the Governor.

The student fee policy should indicate that any increases in student fees would be gradual, moderate, and predictable with timely notification to students and their families. This gives students and their families an opportunity to plan for increases, as opposed to having to react at the last minute to changes in fees. The more potential planning in advance, the greater the potential not to lose any students in the long run due to fee increases.

Any increases in student fees must be accompanied with state, federal, and institutional financial aid to maintain access and affordability for those students with the greatest financial need. As a member of the Board of Trustees, I must continue to advocate for increased financial aid to support CSU students.

The CSU Board of Trustees have balanced a university fee policy by adopting a fee recommendation, consistent with the Governor's Compact Agreement and as part of the 2005-06 CSU budget, that provides early notification and predictability for fee increases beginning in the fall of 2005. The support of the Governor and the legislature for the 2005-06 CSU budget will provide a stable stream of the state General Fund and student fee revenue to support student access and enhance instructional teaching and learning that is essential for students to achieve their academic objectives.

Fee increases should not be made lightly. At the same time, it is important to recognize that fees have been increased to help accommodate needs in the state's budget. As a member of the Board of Trustees, I will reflect carefully before making any future fee increases, while at the same time balancing the need to raise additional funds to allow the system to operate. I have requested that staff provide the Board of Trustees additional information on the profile of CSU families, the profile of students on financial aid, the numbers of students who will be eligible for financial aid even in light of fee increases, and the calculation of the "total cost of education". I commit to study the issues carefully, to request information as needed to help understand the issues, and to make informed decisions while on the Board of Trustees.

Question 4: Are there financially needy CSU students who are eligible for state grant aid but do not receive a Cal Grant or a State University Grant? If so, what financial aid policies should the Board of Trustees pursue to increase the number of financially needy CSU students who receive some form of financial assistance? What have been the effects of state reductions in CSU Institutional financial aid in light of recent student fee increases?

Overview

- For 2003-04, over 208,000 CSU students received in excess of \$1.5 billion in financial aid. This total represents funding from federal, state, and CSU sources and includes grants, student loans, and work.
- There are some eligible financially needy CSU students who could benefit from increased state or institutional grant aid since they currently receive neither a Cal Grant nor a State University Grant.
- Both the Cal Grant programs and the State University Grant program focus on ensuring that students have grant funds to cover mandatory system-wide fees. However, the adequacy of funding for financial aid programs needs to consider the full range of costs associated with the student's attendance and the availability of all financial aid resources.

State University Grant

- Based upon preliminary enrollment and State University Fee increases for 2005-06, approximately 109,500 CSU students will be eligible for a State University Grant. These are the neediest students.
- Available funding will provide State University Grants to 101,200 students. While this represents an increase of 2,700 grants over the previous year, it is not sufficient to award 100% of need to the neediest, eligible students.
- The estimate of eligibility is based upon an increase to the State University Grant program of 25% of the total fee revenue generated by fee and enrollment increases.
 - Note: When student fees are increased, a percentage of the total revenue generated from the fee and enrollment increases is allocated to CSU's State University Grant program.

Cal Grant Programs

- The state has not been able to provide funding for the Cal Grant programs sufficient to cover the needs of every eligible student. To ration available funding, the state has restricted the Cal Grant Entitlement Program for California Community College transfers to students under the age of 24. Students 24 or older may apply for a Competitive Cal Grant. However, because of limited funding, the state has limited the number of Competitive Cal Grants to 22,500 per year.

If so, what financial aid policies should the Board of Trustees pursue to increase the number of financially needy CSU students who receive some form of financial assistance?

Cal Grant Programs

Trustees should consider pursuing these goals.

- Remove the age restriction of 24 on the Cal Grant Entitlement Program for California Community College transfer students.
- Increase the number of Competitive Cal Grant Awards above the current 22,500 per year.
- Provide fee coverage for all Cal Grant B Entitlement freshman recipients. These students are the neediest of all Cal Grant recipients, and the current program provides only a modest living stipend of \$1551 for freshman, adding a grant to cover the State University Fee in the sophomore year.
- Support efforts to covert the Cal Grant Program to a campus-based program administered by colleges rather than by a state agency. This would result in cost savings to the state that could be passed on to students.
 - Campuses administer the federal Pell Grant Entitlement program, and this model could be used to administer the Cal Grant Programs.
 - Currently, campuses determine a student's financial need and award financial aid funds from all sources to meet the student's need, except for the Cal Grant. The California Student Aid Commission determines a student's financial need and awards a Cal Grant. This unnecessary duplication in the awarding process causes confusion to students, and increases processing costs at the campus level.

State University Grant (CSU's Grant Program)

Trustees should consider pursuing these goals.

- Continue to ensure that limited grant funding is targeted to those students from families least able to meet their educational expenses.
- Consider incentives to promote enrollment in larger unit loads, thus reducing the time to degree. The current policy for State University Grants provides for larger awards to students who are enrolled in at least 12 units per term, but limited funding precludes campuses from using this provision. Consideration could also be given to providing even higher grant awards to students who enroll in at least 15 units per term.

Federal Funding

Trustees should consider pursuing these goals.

- Advocacy for continuing increases in the maximum amount of the Federal Pell Grant and appropriations to fully fund the program that serves as the foundation of federal student aid programs.
 - The Pell Grant program represents the foundation of federal student financial aid programs. As the most need-focused federal student aid program, a strong Pell Grant program is essential to closing the gap in college enrollment and completion that exists between low-income students and their more affluent peers. The California State University (CSU) recognizes that the Congress has increased the maximum Pell grant award every year since 1995, which has been vital to ensuring access for many of our students. A continued commitment to the Pell Grant program, and to increases in the maximum Pell Grant award, are essential to ensuring access for disadvantaged students.
- Promotion of opportunities and financial aid funding for year-round enrollment in an effort to more fully utilize facilities and encourage students to complete their degree programs in a shorter time frame.
- Advocacy for increases in other federal grant funding for the CSU, including the Supplemental Educational Opportunity Grant (SEOG) and work study.

What have been the effects of state reductions in CSU institutional financial aid in light of recent student fee increases?

- Recent student fee increases, as well as increases in other costs of attendance, without corresponding increases in grant aid at the federal level as well as at the institutional level, lead to increasing reliance on student loans and student employment.

Senator Don Perata

Re: Pending Appointment - Board of Trustees

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- For educationally and economically disadvantaged students, the failure of grant aid to increase with rising costs can pose severe hardships academically as well as financially. Students may face greater reliance on employment that can impede their academic progress in terms of taking fewer units each term -- or reducing the time available for studying, resulting in reduced academic performance.

Lastly, I want to state that I funded my education through financial aid programs: Cal Grant A, student loans, and work study. My husband also financed his education through financial aid. We understand the needs of financially needy students who sometimes cannot afford to pay for their books and have to choose between buying food or paying for rent. And, since my daughter is a student at CSU Sacramento, I interact with students on this campus to better understand the needs of the students. I see students working more than one job in order to pay for their education.

As a member of the Board of Trustees, I will work hard to promote a fair, fee policy which promotes continued and increased access to the university, and one which promotes increased federal and state financial aid.

Question 5: More than half of all incoming CSU freshman require English and/or math remediation during their first year at the university. What overall strategies and policies should the State pursue to improve the academic preparation of students entering the university? What should CSU's role be in these strategies?

- This is correct. As reported to the CSU Board of Trustees in January 2004, 63% of first-time freshmen entered CSU in fall 2003 proficient in mathematics, and 52% entered proficient in English.
- Overall, 42% of first-time freshman entering fall 2003 were proficient in both English and mathematics, and **58%** were required to enroll in remedial education.
- The proficiency rate in English has remained relatively flat since the Trustee remediation policy became effective with first-time freshman entering CSU in fall 1998. In 1998, 53% of the students were proficient in English.
- The proficiency rate in mathematics has increased significantly since 1998, moving from 46% to 63%.

What overall strategies and policies should the State pursue to improve the academic preparation of students entering the university? What should CSU's role be in these strategies?

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- The state has already begun to implement a strategy to help students assess their readiness for college. To address the issue of academic preparation, CSU entered into an unprecedented partnership with the California Department of Education and the State Board of Education to ensure students are academically prepared for college. This collaborative program is called the Early Assessment Program (EAP) which was initially implemented in spring 2004. The goal of this unprecedented partnership is to ensure that college-bound high-school graduates have the English and mathematics skills expected by the state university.
- The EAP allows students, their teachers, their parents, and the CSU to know exactly how well prepared the 11th graders are for university-level work. Furthermore, it will give high school students a chance to polish their skills before enrolling in college.
- The EAP has three components: early testing in 11th grade, the opportunity for additional academic preparation in 12th grade, and professional development for high school teachers.
- The EAP tests are augmented California Standards Tests (CSTs) in 11th grade English and mathematics; these tests are part of California's public school testing and accountability system and are required of all students.
- The augmented tests were developed by CSU and K-12 faculty, who made sure that both the California high school standards as well as the CSU standards were covered. The faculty added a writing sample to the English CST, as well as a few more test items, but they kept the time needed for testing to a minimum.
- After 11th graders take the test (the CST is mandatory while the augmented questions are voluntary), they receive a score indicating whether they have either met the CSU expectations (and are thus exempt from any additional CSU placement tests) or whether they need additional preparation in order to be successful in college-level work. Those who need extra work will have their entire senior year to prepare further. Students who need better skills in expository reading and writing can take a specially designed 12th grade course, developed jointly by teachers from high schools and the university. Students who need to upgrade their mathematics skills will have access to courses and to other individualized online interactive programs during their senior year.
- A final component of the EAP is teacher training. CSU teacher education faculty sponsor reading institutes and are developing materials through which high school teachers can improve their skills in helping students to read and write effectively.

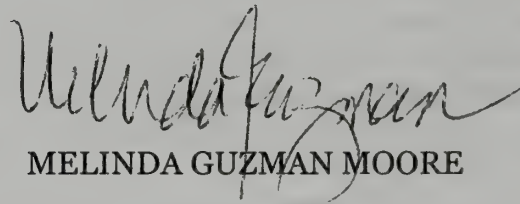
- In the long-term, this program will contribute to improved graduation rates. CSU students will spend less time in remediation and more time taking the classes that really count toward their baccalaureate degree.
- Through the EAP program, teachers will become very familiar with the performance levels expected of students and will have the tools to help them achieve those standards.
- Result of first-year testing of high school juniors in spring 2004:
 - Over 153,000 high school 11th grade students took the augmented CST voluntarily in English and mathematics.
 - 22% were classified as college ready in English (33,700 students)
 - 55% were classified as college ready in mathematics (64,000 students).
 - First year results were predicted and expected.
 - Students have another year of preparation in English and mathematics during their senior year in high school
- To ensure continued opportunities for student to gain an early indication of their college readiness, the state needs to continue to support the California Standards Test in 11th grade English/Language Arts and mathematics.

FINAL COMMENTS:

Senator Perata and members of the Senate Rules Committee, I want to thank you for your serious consideration as you deliberate on confirming my appointment to the CSU Board of Trustees. I urge you to support my confirmation.

Please feel free to call me if you have any questions. Otherwise, I have already contacted each of your offices to provide information on my qualifications and to request a meeting with you to discuss my confirmation. I will also look forward to meeting you as well at my confirmation hearing.

Very truly yours,



MELINDA GUZMAN MOORE

MGM/slh

AECOM

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January 10, 2005

Don Perata
Chairman
State Capitol, Room 420
Sacramento, CA 95814-4900

Dear Chairman Perata:

The State of California, in order to maintain its economic leadership position in the world, must reinforce its commitment to all levels of education within the State. This must be done individually by each educational entity, and the State as a driving force to maximize all students' access to and coordination amongst the public educational systems within the state. The California State University (CSU) system is a critical link in making the California educational dream a reality.

In your letter of December 22, 2004, you requested brief answers to the following questions;

Question #1: Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as a member of the California State University Board of Trustees?

Response: The quality of both the education and the experiences our students derive out of attending CSU is paramount. There are numerous ways of measuring this from national rankings, graduation rates, surveys of students, faculty, and employees by campus, etc. CSU must lead the way in providing the best quality education which means that working with and integrating the high schools, community colleges and future employers into a comprehensive systematic program. CSU is a major economic engine of this States' economy and with the projected increase in population, a seamless system must be the long-term goal to efficiently and effectively educate our population.

Question #2: CSU plays an important role in preparing a skilled state workforce. Two critical areas of need are teacher preparation and nursing education where workforce shortages have been critical for years. What is CSU doing to address these workforce preparation needs? How are you monitoring the success of these and other efforts to meet the skill and knowledge requirements of the California labor market?

Response: Preparing quality graduates, as stated in #1, is the key mission of CSU. CSU has in place now a teacher evaluation and feedback program for all new teachers from the CSU system. This program must be continued and further developed to share "lessons learned" amongst campuses so that CSU is routinely tailoring the needs of the schools with their curriculum. The same program could be instituted for the nursing profession initially with the major hospitals in specific locations. In addition, working with the high schools and community college counselors on workforce opportunities will be critical in assisting these students to "real" professions which match their interests. The graduation numbers and rates are provided for the CSU system and goals are monitored and reported.

Each campus has individual partnerships with various businesses in their local areas. Some businesses offer internships and advice as part of being on the advisory boards of individual campuses. In looking at the future of the California workforce, composite advisory boards for particular disciplines (engineering, teaching, etc.) can be established to provide guidance as to the needs of the labor market so that immediate recommendations and adjustments can be made system wide to ensure proper academic preparation for the ever changing workplace.

Question #3: As part of the 2004-05 Budget process, CSU negotiated an agreement with the Governor on a funding compact that envisions student fees rising on an annual basis. What do you believe should be the key features of a student fee policy for CSU students? How should the CSU Board of Trustees balance a university fee policy that provides students and families with costs predictability from year to year, and provide the university with a stable stream of resources?

Response: Preserving access for Californians is critical to the success of the California dream and providing an enhanced life for our growing population. Balancing access, quality, fee policy and opportunity in economic hard times is the greatest challenge CSU faces. Many factors can optimize the scarce dollars that all contribute to the cost of education. Some intangibles, but big impact items are reductions in remedial education; community college transfer integration programs; Early Assessment Program (EPA); systematic development and graduation rate improvement. Other potential value added avenues should emulate the private University systems where fundraising, capital campaigns, business association sponsorships and federal grants should be actively encouraged. By doing so CSU can optimize the entire financial/academic approach for quality education.

Question #4: Are there financially needy CSU students who are eligible for state grant aid but do not receive Cal Grant or a state university grant? If so, what financial aid policies should the Board of Trustees pursue to increase the number of financially needy CSU students who receive some form of financial assistance? What have been the effects of state reductions in CSU institutional financial aid in light of recent student fee increases?

Response: In a period of economic downturns for the State of California, the effect of rising costs will pose hardships on those families with limited disposable income. Question three (3) provides various ways to optimize the academic program as well as the financial resources available now to CSU. As such, the Cal Grant Program, Federal Funding, State University Grant Program and a business association program aimed at the financially needy must all be pursued. Internships can be immensely valuable in easing the financial burden and accelerating a smooth transition into the workplace. This will become an ever increasing challenge as the number of college age students increases and the number of adults wanting to improve their own educational background increases with the growing State's population. CSU must explore ways to utilize faculty, facilities, and local "teacher" aides such as the internet, volunteers, senior organizations, businesses, etc. to help fill the gap. Conventional approaches will no longer solve today's issues.

Question #5: More than half of all incoming CSU freshman require English and/or math remediation during their first year at the university. What overall strategies and policies should the State pursue to improve the academic preparation of students entering the university? What should CSU's role be in these strategies?

Response: The State of California should have a totally integrated program from elementary through the University system for education. CSU has two initiatives that will assist the state in integrating various programs. The first was implemented last spring and is the Early Assessment Program (EAP) which tests the college-bound juniors in English and Mathematics so they can better prepare themselves in their senior year. This step can be augmented with an out-reach program, by campus, for those schools that need the most assistance. CSU can also evaluate the level of teaching improvement that is needed and focus resources in this element. On-line applications can be made available to high school students as well as mentoring from CSU to the high schools. Another initiative must be the close course coordination between the Community College system and CSU. By building a "ladder" between the high schools, community colleges and CSU the State of California will minimize its expenditures and maximize the opportunities for all its students.

I am looking forward to discussing these and any other topics you would care to discuss.

Regards,



Raymond W. Holdsworth

OFFICE OF
SHERIFF-CORONER
EMERGENCY SERVICES

MICHAEL F. PRIZMICH
SHERIFF-CORONER
"SHERIFF MIKE"

April 20, 2005

Nettie Sabelhaus Rules Committee Appointments Director
State Capitol room 420
Sacramento, Ca 95814

Dear Director Sabelhaus and Senate Rules Committee

Please find my responses to the questions of the Senate Rules Committee on my appointment to the Board of Corrections.

1. Please provide a brief statement of goals. What do you hope to accomplish during your term as a member of the Board of Corrections?

My role on the Board of Corrections is to represent the unique challenges facing smaller County Jails. Issues of adequate relevant training and workplace safety are significant to me but I am also keenly interested in providing opportunities to inmate who have the desire is to improve themselves. Therefore, in the training area my focus is more relevance not simply achieving hours. Additionally, I have found that smaller agencies are very often a breeding ground for often new innovative ideas. We need to encourage this creativity in a helpful way.

2. What are the most important challenges facing the Board?

Three areas come to mind with this question. First we need a better response to jail overcrowding. This condition fosters a multitude of workplace safety and efficiency issues. Elevate the role corrections plays in the criminal justice system. Finally, encourage better interagency participation as it relates to Jail personnel, Probation, and the District Attorney.

3. How can local juvenile and corrections programs better coordinate with CYA and CDC, and what role can the board play to improve this relationship?

I believe whenever groups begin working together relationship and understanding inevitability broaden and deepen. The concept of focus groups in each County brought together to deal with problems facing that community should be encouraged by the Board.

4. When the board finds local facilities in need of improvement, what "teeth" do you have to achieve improvement? Does the board need more authority to achieve improvement in local facilities?

I firmly believe that "local" facilities only "fail" when not given adequate assistance from those who can assist. I have never experience nor hear of a local facility purposely ignoring or refusing to come in compliance without some outside force preventing compliance. Typically, issues that cause problems for jail compliance revolve around a funding issue. As you know funding can not be resolved by the Jail Managers, funding is an issue for the Board of Supervisor or State Legislature. Currently there are no disincentives for the Board of Supervisor not to fund needed jail issues, and the State is keenly aware that mandates by them require funding. So virtually all noncompliance issues I have ever experienced aren't the fault of the local facilities but of a lack of funding by the Board or the State. Penalties for failing to fund would clearly be an answer.

APR 25 2005

5. Jail and juvenile facilities throughout the state are severely overcrowded and many operate under population caps imposed by federal courts. What policies should the board pursue to address the overcrowding problems in local jails and juvenile facilities?

The easier answer is the follow the leader response that is, release the non violent offenders, add more home monitoring devices, etc. All of these "fixes" are a relief for overcrowding but they are only a response to a condition that is widely out of control. The fix comes in two forms. First we need to deal with the offenders earlier not later as their criminal history develops and secondly we need to give more control to the Jail Managers so they may manage the inmates population. Currently, Jail Managers are not allow by law to cite out felonies, even though the vast majority with certainty will in fact be OR'ed by the judge at the next court appearance. Giving Jail Managers more flexibility with inmates would greatly aid with jail overcrowding .

6. An estimated 10 to 15 percent of offenders in local jails and juvenile facilities are mentally ill. What policies should the board pursue to reduce the number of mentally ill offenders in jails and juvenile facilities?

Mentally ill do not belong in jail. While often their action out violates a crime the cause of their acting out is much more complicated and not easily dealt with in a jail setting. Simply put, the solution to this issue is more money. Some years ago mental health treatment suffered a set back in financial support and the end result was that the jails in California took the burden on. By virtue of some of the mentally ill engaging in crimes jails became the defacto mental health housing units for the State. Money will help fix this problem. Money for appropriate housing for the mentally ill and money for appropriate treatment.

7. The board oversees the Juvenile Justice Crime Prevention Act, which distributes \$116 million annually to counties. What role should the board play to ensure that these funds are well spent?

The Board needs to look at each grant and correlate the request with the outcome and one should draw a positive conclusion from your observations. We need to ask ourselves if this is a request for money sake or if the program will provide a solution to the stated problem.

8. How can the board use the expertise it is obtaining as a result of the research generated by its grant programs to improve the quality and effectiveness of California's criminal justice policy?

Whenever a person receives the honor of sitting on a Commission such as this, one had better be prepared and willing to devote time to the issues. Therefore, the Commissioners need to be involved in a greater and intimate degree than I see our involvement currently. Secondly there should be a more concerted effort to publish successes that are discovered up and down the state. Make it known to all what is considered a success so that perhaps others can develop even better programs or solutions. The most logical point for this word to get out is through the Board of Corrections staff.

9. How can the state better coordinate its efforts concerning juvenile justice with local governments?

As you know the justice system is very costly. The difficulty local government has is that they are challenged by the demands placed on them by the circumstances of governmental life. Providing adequate aid and assistance to their local citizens and attempting to deal with the demands constantly being advanced by the State and Federal government often times creates impossible conditions to work under. I'd prefer to see somewhere in the system an ombudsman, if you will, as it relates to State and Local involvement with one another. Not just another bureaucrat but someone truly there to assist. Well one may ask what are the State representatives there for? All of your jobs have changed dramatically and issues as important as this constantly fly under the radar and a person whose position was to fairly and humbly assist would be of great help for everyone in coordinating and facilitating these important issues.

10. As you know, the Governor's Reorganization Plan would make several changes to the scope, size and mission of the board. For example, the reorganization plan calls for the merging the Board with the Commission on Correctional Peace Officer Standards and Training. In addition, it would require the board to establish minimum standards for state correctional facilities, both adult and juvenile. How do you envision your role as a Board member in effecting a smooth transition to the expanded roles and responsibilities of the board under the reorganization plan?

I sit on the POST Advisory Board as well as this Commission and I believe providing training standards for all of corrections would be a good thing. Providing that the effort of establishing the standard doesn't get bogged down in red tape and appropriate training and enough training for those who need it are kept in focus.

11. What do you believe the role of the new board should be in relation to the new Division of Juvenile Justice under the reorganized Department of Corrections and Rehabilitation?

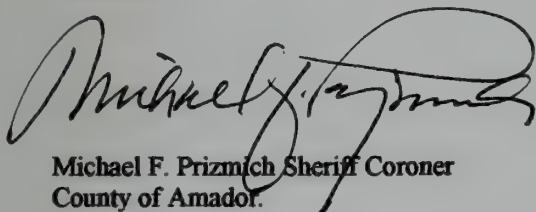
The Board can provide some insight from a different perspective than what's been seen before. If handled correctly the Board can energize and enhance the reorganization.

12. How should the Youth Authority be reformed to provide better services and improved the public safety outcomes? To what extent should probation and juvenile court judges have an increased role in shaping the population, custodial and parole supervision and services, and lengths of stay policies and decisions for minors committed to the Youth Authority?

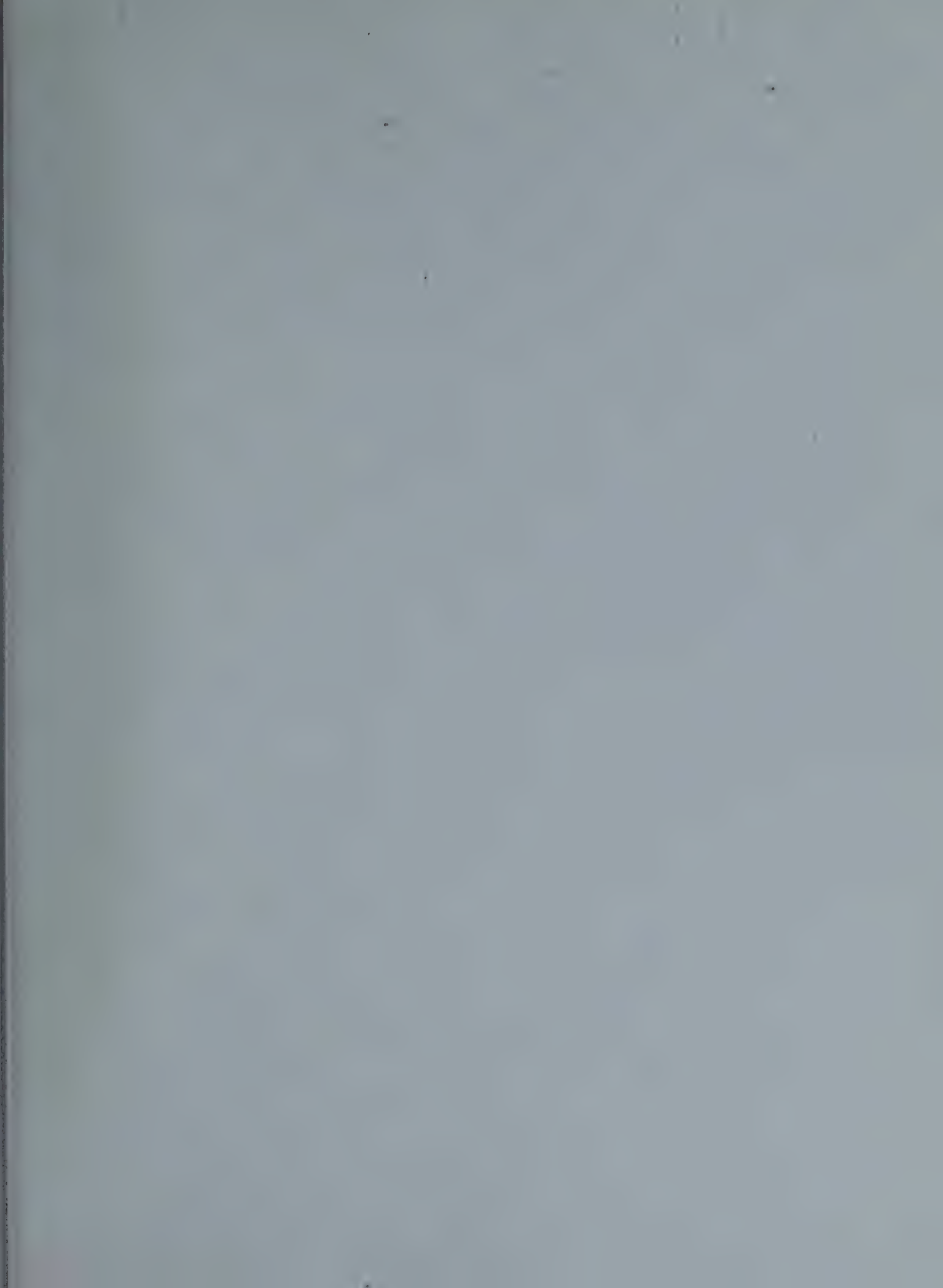
Two things are occurring inside the Youth Authority that need to be equally balanced, correction and rehabilitation. They are equally important to the success of a youthful offender. All too often one or the other "takes over" and their particular discipline overshadows the other. They need to be equally balanced. Probation should play a greater role in shaping the population but with the equal balance I spoke of with regard to the Youth Authority. I firmly believe the closer you are to the problem the better one can fix the problem if given the right tools.

Thank you for this great opportunity to share my thoughts and view point with you.

Sincerely

A handwritten signature in black ink, appearing to read "Michael F. Prizmich". The signature is fluid and cursive, with a large, sweeping loop at the end.

Michael F. Prizmich Sheriff Coroner
County of Amador.



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SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

MEMBER ABSENT

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

BILL BAILEY, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

EVAN GOLDBERG, Consultant to DEBRA BOWEN

ALSO PRESENT

FREDERICK R. RUIZ, Member
Regents of the University of California

SENATOR DEAN FLOREZ

DIAN M. GRUENEICH, Commissioner
Public Utilities Commission

RALPH CAVANAGH
Natural Resources Defense Council; CalEnergy;
Distributed Energy Resources Group; enXco; FPL Energy;
Itron; MidAmerican Energy Holdings Company;
National Association of Energy Services Companies;
Oak Creek Energy; PPM; Quantum Consulting

ITZEL BERRIO
The Greenlining Institute

1 D.J. SMITH
California Large Energy Consumers Association (CLECA)
2 Pacificorp

3 JUSTIN BRADLEY
4 Silicon Valley Leadership Group

5 DAN KALB
6 Union of Concerned Scientists

7 JULEE MALINOWSKI-BALL
California Biomass Energy Alliance

8 MIKE FLORIO, Senior Attorney
9 The Utility Reform Network (TURN)

10 KATHRYN PHILLIPS
11 Environmental Defense

12 DANA APPLING
Office of Ratepayer Advocates
13 Public Utilities Commission

14 SCOTT GOVENAR
California Wind Energy Association

15 JAN SMUTNY-JONES, Executive Director
16 IEP

17 DUNCAN McFETRIDGE
18 Coalition of Utility Employees
State Pipes Trades Council

19 CAITLIN McCUNE
20 California Labor Federation

21 DAVID MODISETTE
22 California Electric Transportation Coalition

23 JAMES HODGES
24 California Association of Community and Energy Services

25 DOROTHY ROTHROCK
California Manufacturers and Technology Association

26 TOM ADAMS, Board President
27 California League of Conservation Voters

28

1 V. JOHN WHITE

Center for Energy Efficiency Renewable Technology

2 GARY A. KUWABARA, Chief Deputy Director
3 Department of Rehabilitation

4 DAN KYSOR, Director
5 Governmental Affairs
6 California Council of the Blind

7 DARRELL KELCH
8 California Association of Area Agencies on Aging

9 MICHAEL COLLINS, Executive Director
10 State Independent Living Council

11 SHERI FARINHA, CEO
12 NorCal Center on Deafness

13 DIANA HERRON, Supervisor
14 California School for the Deaf, Fremont

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: Thank you. We have the distinguished Senator from -- it's not Dinuba; what's another big place -- Shafter. I get those metropolitan areas confused.

Senator Florez, would you like to come up? We'll take your Regent Mr. Ruiz first, if that's okay.

Without crutches; good for you.

SENATOR FLOREZ: Getting there.

Thank you, Mr. Chairman and Members.

First and foremost, Mr. Pro Tem mentioned one of the towns of the 16th District that I represent. Yes, it does have one three-story building in it.

CHAIRMAN PERATA: Landmark.

SENATOR FLOREZ: Mr. Chairman, Members, I would like to say first and foremost that I'm very proud and very fortunate to introduce not only a good friend of mine, but a very good friend of the Central Valley, and more importantly, I think, of the students that attend the University California.

I'm not sure if you know that I got my start here as a Senate Fellow back in 1987. Before that, I had the good fortune of attending UCLA, where I was the Student Body President and had the good fortune of constantly protesting at University of California Regents meetings.

So, I'm very proud that here I've gone full circle to introduce someone who, hopefully, will sit on that Board of Regents and has the perspective of one that I would say in many cases is sometimes lacking, and that's the Central

1 Valley perspective.

2 Many students now are looking towards the
3 University of California much more so than we have in the past.
4 In the old days, we used to look at Fresno State and a few other
5 places. Today, many of those students are intending to go the
6 University of California. And I think we really need a
7 perspective, if you will, of the Central Valley.

8 I'm very proud that Fred Ruiz is before you.
9 He's not only been successful over the last 40 years, but his
10 company was started in 1964, I think, just a year after I was
11 born. And it's been a staple in the Central Valley and a model,
12 if you will, for a success story that is unparalleled, I
13 believe.

14 So, Mr. Chairman, I am very, very proud of him.
15 We're all proud of him in the Central Valley. He's received
16 numerous awards, but the most important thing I could say about
17 him is, I think he'll bring a perspective to the Regents -- and
18 I'll go back to my student days -- that isn't haughty. It comes
19 from the bottom up, knowing what it's like to be around and work
20 with farmworkers. And I think it's a perspective that basically
21 says that the transfer issues at the University of California
22 are going to be extremely important, particularly for the
23 Valley.

24 And I think Fred Ruiz is a person who knows about
25 second chances. He talks constantly about coming from one of
26 these small towns called Dinuba, where the students are
27 constantly looking for a second chance.

28 I'm very proud to introduce him to you. I hope

1 that the Rules Committee will approve him, and say thank you to
2 Mr. Ruiz for spending the time and the efforts he'll have on to
3 the University of California as well.

4 CHAIRMAN PERATA: Senator, thank you.

5 MR. RUIZ: Thank you.

6 CHAIRMAN PERATA: Regent Ruiz.

7 MR. RUIZ: That was very nice. I appreciate
8 that.

9 CHAIRMAN PERATA: Except for the part about right
10 before or after he was born. I thought that was an elbow to the
11 ribs.

12 MR. RUIZ: Senator, I would like to make a
13 comment. First of all, I want you to know that it would be a
14 great honor and a privilege to serve as a Regent for the
15 University of California.

16 More importantly I recognize that serving as a
17 Regent is a great responsibility to the State of California and
18 to all Californians.

19 I believe that the University of California is
20 one of the greatest public universities in the world. I believe
21 that what makes the University of California so great is the
22 quality of the education that it provides, the success of its
23 research in all fields.

24 I believe that the University of California must
25 remain affordable, and it must remain accessible to all
26 Californians. We all know that the University of California has
27 played a tremendous role in the economic success of California.
28 That role must continue.

My commitment to you is that I will do my best to serve to ensure that the University of California continues to improve in its importance to California and Californians.

Thank you.

CHAIRMAN PERATA: Thank you.

Questions from either Member? Senator Bowen, do you have any questions?

SENATOR BOWEN: I do.

CHAIRMAN PERATA: I have a couple.

SENATOR BOWEN: For people who were in the hearing last week, you will be familiar with this issue.

UCLA and UC Riverside have both begun taking credit cards to pay for student fees. UCLA does not add a charge for a student on who pays with a credit card, but UC Riverside adds an additional two-and-a-half percent to the amount in what it calls a convenience fee.

Do you believe there is a role for the Regents in dealing with this question of whether or not credit card transactions should be surcharged?

MR. RUIZ: I just learned about this yesterday, and actually I was surprised that there is a convenience fee charged. I'm not familiar with it, to tell you the truth. I find it unusual.

SENATOR BOWEN: It would be illegal in the private sector. We prohibit any business in California from surcharging credit card transactions. Some government agencies have gotten around that by calling it a convenience fee.

MR. RUIZ: Of course, this is part of the

1 affordability issue, and it's another way to get another pound
2 of flesh, I guess.

3 I've asked the University to just look into it so
4 that we could try to understand what it is. I don't feel that
5 it's fair. So, we're going to look into it, is what I've asked
6 them to do. It's new. It doesn't sound fair to me.

7 If it's illegal in the private sector, why would
8 it not be illegal --

9 SENATOR BOWEN: It's called a convenience fee, so
10 it's not legally a surcharge.

11 We used to do it in the Department of Motor
12 Vehicles. That was abandoned recently because it actually costs
13 less to process a credit card transaction, which is why in the
14 nonprofit sector you have your public radio station, and your
15 public tv station, and United Appeal, and Jewish Appeal and so
16 forth, urging people to pay with a credit card. The result,
17 there are fewer bounced check costs, less incidents of default.
18 There isn't a hold on the funds for collection. It's just more
19 visible when you're paying two percent, or whatever it is, to
20 the credit card than when you're bearing all those other costs
21 internally.

22 MR. RUIZ: What I did learn yesterday is that
23 there was a great demand for people to be able to pay their fees
24 through the internet, and in order for the University to
25 accommodate that demand, there was a -- it would require a fair
26 amount of equipment. And so, this is just a way of recovering
27 the costs of that equipment.

28 Again, you know, I was just surprised to hear

1 about it. I think that's something --

2 SENATOR BATTIN: I'm sorry, could you repeat what
3 the reason they gave you was?

4 MR. RUIZ: It requires purchase of equipment to
5 set up to meet the convenience. They were getting a lot of
6 requests, you know, can we pay through the internet.

7 In fairness to the University, they were trying
8 to be more customer-service oriented.

9 SENATOR BATTIN: I think for anybody who pays
10 with the actual credit card and hands it to them, the credit
11 card companies will give them that equipment for free. And I
12 think the set up on the internet is probably cheap and easy,
13 too.

14 Not actually representing UCR, but almost every
15 inch of land around it, I guarantee you that I will look into
16 this as well.

17 SENATOR BOWEN: Again, the concern with the
18 internet set up and the registration is that, again, you can see
19 the costs of establishing on-line registration and acceptance of
20 electronic payment form, but what you don't see, and what the
21 University and the community colleges, who do this, and the CSUs
22 who do this, what you don't see is the cost savings for not
23 having, particularly during a registration time when you have
24 extraordinary overtime requirements, where you have to bring on
25 additional people, or you have students who have a hard time
26 physically getting in to register when they need to.

27 So they are in this whole area, and I'd love to
28 have a friend, a champion, on this issue.

1 In the private sector we're moving towards these
2 electronic processing mechanisms because it's far less expensive
3 overall, but we're going the opposite direction in the
4 government. At the same time as we are trying to encourage
5 people to do things on line, we're charging them more for the
6 privilege of saving the state money.

7 MR. RUIZ: I would be more than happy to ask the
8 University to get you some kind of written response in terms of
9 why.

10 SENATOR BOWEN: Great. Look forward to working
11 with you.

12 CHAIRMAN PERATA: Senator Ashburn.

13 SENATOR ASHBURN: Just very briefly, Mr.
14 President.

15 Fred Ruiz, I'm glad you're here. This is a
16 tremendous appointment. We had a conversation similar to the
17 conversation that has been held here about a broader application
18 of the same concept, which is service to the customer, and
19 making sure that the systems, and the personnel, and the methods
20 that are in place within the University are designed for the
21 students, and that the transcripts, that the accounting
22 mechanisms, that the materials availability are all using the
23 latest technology, and that they are student-friendly, and that
24 we are, number one, providing services, because goodness knows
25 the fees are showing no sign of relief.

26 I simply would ask of you as you are confirmed to
27 take that up as a charge, because you are unique because you are
28 a business leader in a very, very significant organization in

1 the private sector that utilizes those very techniques,
2 technologies, to better serve your customers. It'd be great to
3 have somebody there championing the cause for the betterment of
4 the students, and everyone would win in that process.

5 I hope that you'll accept that challenge.

6 MR. RUIZ: I accept the challenge.

7 SENATOR ASHBURN: Thank you.

8 SENATOR BATTIN: Mr. President, I'll move
9 acceptance of the nomination.

10 CHAIRMAN PERATA: We have a motion.

11 I have couple questions. All of us have
12 discussed this, that we're seeing a shrinkage of financial aid
13 to worthy students. It naturally falls disproportionately upon
14 people such as you used to be, I guess.

15 So, I know that you're in touch with that, but
16 when the University restricted or reduced the money to
17 institutional financial aid, how was that decision made? What
18 was the criteria?

19 MR. RUIZ: The criteria was based just in terms
20 of funding. You know, how do you keep the University running on
21 all eight cylinders? Costs are going up. The issue of raising
22 fees was discussed. It was a very intense discussion.

23 I can tell you I was -- I felt much more
24 comfortable with the fact that most of the Regents felt raising
25 fees to the students was just the last -- the last thing that
26 you want to do.

27 So, we raised fees, and I voted for it
28 reluctantly because we were trying to pass the whole budget.

1 But we're very sensitive to it. Strictly it was
2 a financial decision, trying to balance -- balance everything
3 out. Disappointed that we had to do that, and not something we
4 want to do on a regular basis.

5 Affordability is really, really important. I
6 understand that. And certainly, that doesn't go that way.

7 CHAIRMAN PERATA: Probably before you got there,
8 maybe not, the UC institution made a deal with the Governor on
9 the compact. We're already having a hard time trying to fight
10 for viability in the three branches of government.

11 When something like that is done, where a deal is
12 sort of made around us, it calls into question what our role is
13 going to be in the gut. Sort of an in-your-face response would
14 be, well, if you didn't need us then, why do you need us now?

15 I just maybe pose this as a rhetorical question,
16 but I believe the UC Regents need to be careful about the
17 precedent-setting nature of that because last year, we made a
18 determined effort in this House and in our caucus to highlight
19 the importance of higher education. And then we were repeatedly
20 represented that, "Don't worry," nothing was going on. And the
21 next thing we know, everybody was high-fiving on the first
22 floor.

23 So, I would take back to your betters, if you
24 would, just that the reality is that it's not going to be the
25 dog's fault the second time, and it's not a good way to do
26 business with the Legislature.

27 I don't know who did it, but it was a bad idea.
28 I would hope that they would not make that a pattern and

1 practice.

2 Finally, and this something I know you're aware
3 of, we have a huge gap that the Chancellor from Berkeley has
4 talked about and others since the implementation of Prop. 209.
5 We are seeing a diminishing student body, particularly in the
6 African-American community.

7 I would hope that -- well, and the other thing
8 that's related to that, that I for the life of me don't
9 understand how a 4.0 became a 4.5. You know, it's like being
10 super pregnant.

11 [Laughter.]

12 SENATOR BOWEN: How do you know.

13 [Laughter.]

14 CHAIRMAN PERATA: I read a lot.

15 But what happens is, now that we've sort of
16 inflated the standard, and you have students that are going this
17 way, the gap gets wider.

18 I would encourage within the confines of the law
19 a very aggressive approach. And I don't know if it's outreach,
20 but I know that this is a very bad precedent that's taking place
21 here right now.

22 And there was a time, even it tracks politically,
23 where you had African-Americans in concentrated geographical
24 areas, which often times meant that you'd get an African-
25 American elected representative. Well, the last census showed
26 that many of the African-Americans in California are now in
27 Diaspora, they've moved. They've gone to the Central Valley.
28 They've basically gone where the American dream offered them a

1 better opportunity, just like the rest of us.

2 So, this is one that I would just, you know,
3 encourage you to keep your eye on. I don't have any solution
4 here for you, but I know a problem when I see it. Once that
5 slide starts taking place, it's really hard to get it back.

6 MR. RUIZ: I agree with everything that you said.
7 Diversity is really important to me. I think the best
8 organizations in the world are ones that represent their
9 constituents.

10 So, coming from the Valley, you know, I really
11 understand that there is a great need for the University to do a
12 better job in getting minorities to be part of the great
13 education programs that they offer.

14 So, I will keep my eye on that, I promise you.

15 CHAIRMAN PERATA: And finally, could you give me
16 the status of the labor contract? What's going on? Have we now
17 signed contract with AFSME?

18 MR. RUIZ: I can't answer that, sir.

19 CHAIRMAN PERATA: All right.

20 Well, we have a motion. Now we'll allow for the
21 public participation portion. I think this guy is in the Lord's
22 arms, so we don't have to have a lot of stuff said.

23 I'm sorry, Mr. Ruiz. You probably would like to
24 hear a lot said.

25 [Laughter.]

26 CHAIRMAN PERATA: Take him outside.

27 So, please come forward and briefly provide your
28 comments. Good. I want to thank all of you for that.

1 Anybody here in opposition? I suggest you stay
2 seated.

3 [Laughter.]

4 CHAIRMAN PERATA: Seeing none, do you have any
5 family here, sir, that you'd like to introduce?

6 MR. RUIZ: No, I don't. I wasn't sure how this
7 was going to go.

8 [Laughter.]

9 CHAIRMAN PERATA: Good for you.

10 Please call the roll.

11 SECRETARY WEBB: Ashburn.

12 SENATOR ASHBURN: Aye.

13 SECRETARY WEBB: Ashburn Aye. Bowen.

14 SENATOR BOWEN: Aye.

15 SECRETARY WEBB: Bowen Aye. Battin.

16 SENATOR BATTIN: Aye.

17 SECRETARY WEBB: Battin Aye. Perata.

18 CHAIRMAN PERATA: Aye.

19 SECRETARY WEBB: Perata Aye. Four to Zero.

20 CHAIRMAN PERATA: It is unanimous.
21 Congratulations.

22 MR. RUIZ: Thank you very much.

23 CHAIRMAN PERATA: Which means most of you are
24 here for the next nominee, Dian Grueneich, Commissioner, Public
25 Utilities Commission.

26 Would you please come forward. Good afternoon.

27 MS. GRUENEICH: Good afternoon.

28 CHAIRMAN PERATA: Welcome. You may start at any

1 point you'd like.

2 MS. GRUENEICH: Thank you. I do have a few short
3 remarks to make.

4 Chairman Perata and Committee Members, it is an
5 honor to be here today. I have been involved in California
6 energy issues for almost 30 years. I started my career as a
7 deputy counsel for the California Energy Commission here in
8 Sacramento. I then worked for large law firm, and almost 20
9 years ago I started my own law and public policy consulting firm
10 until my appointment by Governor Schwarzenegger to the
11 California Public Utilities Commission in January of this year.

12 In my practice prior to my appointment, I
13 represented a broad cross-section of organizations on both
14 business and regulatory matters, including educational
15 institutions, private businesses, small and large cities and
16 counties, and environmental groups. This experience, plus the
17 experience of running a small business, will serve me well as a
18 commissioner. I bring a unique perspective to the position, in
19 that I understand the concerns of government, businesses and
20 public interest organizations. I can and will approach issues
21 before the commission with an open mind.

22 I am proud to be a Democrat appointed by a
23 Republican Governor, because it demonstrates that all
24 Californians can and need to work together to solve our pressing
25 energy and telecommunications problems. I hope that during my
26 tenure on the Public Utilities Commission I can continue to
27 bridge the divide and show that a healthy environment and a
28 healthy economy are not incompatible, that regulation is not the

1 enemy of business, and that it is possible to extend a helping
2 hand to low-income, rural, disabled, and limited English
3 speaking communities without creating excessively high rates or
4 stifling competition.

5 As a former practitioner before the commission, I
6 understand the good and bad sides of commission processes and
7 procedures. My goal as a commissioner is to ensure open and
8 fair decision making with robust public input. I intend to
9 simplify the procedures of the commission to remove unnecessary
10 barriers to participation, and to reach out to those ratepayers
11 and consumers who are not well represented before the
12 commission.

13 Most importantly, I intend to listen to consumers
14 and to other parties, to my fellow commissioners, to commission
15 staff, to the Legislature, to the Governor's Office, and to my
16 own common sense and good judgment. In particular, I pledge to
17 work with you and your fellow Legislators so that together we
18 can develop the best approach to utility regulation for the
19 consumers of California.

20 I bring an open mind, not only to understanding
21 the issues I face as a commissioner, but also to examining new
22 and creative solutions. I believe I can help the commission
23 move forward and to provide consumers in California with
24 affordable and reliable utility services while fostering
25 environmental sustainability, technological innovation and jobs
26 for Californians.

27 Let me briefly summarize some of my specific
28 goals. I will only list them today, as I provide more detailed

1 answers in the materials I sent to the Committee last week.

2 In the area of energy my goals are: to prevent
3 blackouts and exorbitant costs, as experienced in 2000-2001; to
4 keep California not only the national but indeed the
5 international leader in energy efficiency; to protect ratepayers
6 by ensuring that they pay reasonable rates and receive high
7 quality service; to ensure that investor-owned utilities meet
8 and, hopefully, exceed their obligation to provide 20 percent of
9 supply from renewable resources; to approve new transmission
10 infrastructure for the state; and to help low-income
11 Californians by preserving and expanding affordable rate
12 programs.

13 In the area of telecommunications: to reform the
14 PUC's regulatory structure to respond to changes in technology,
15 industry structure, and federal regulation while protecting the
16 right of Californians to basic phone service at reasonable
17 rates, and supporting the access of all customers to
18 technological innovation; to revise and reinstitute a consumer
19 Bill of Rights that is enforceable and a workable plan that --
20 in this area; to reach out especially to the needs of the
21 underserved communities, especially with regard to funding of
22 universal services, and in this area in particular, to review
23 the commission's funding and programs to ensure that will be
24 adequate funding and access to advanced technologies.

25 In the area of water: to bring more focus at the
26 commission on water quality issues, and to investigate the means
27 by which the commission can ensure that ratepayers have clean
28 drinking water, adequate supplies, and reasonable rates.

And finally in the area of rail safety: to reduce accident rates by seeking changes in state and federal law to increase the commission's authority over railroad operations, and increase the number of inspection and enforcement staff at the commission.

I thank you and welcome your questions.

CHAIRMAN PERATA: Thank you.

Do you have any family that you'd like to introduce in case things don't go so well later?

[Laughter.]

MS. GRUENEICH: Yes. I wanted to introduce my husband, Steve Passek.

I also have two children, both eleven-year-olds, but I decided that we'd, one, keep them in school, and while I thought this would be a marvelous opportunity to them to see government in action, I wasn't really sure how things might go. So, they're in school, at least I hope.

CHAIRMAN PERATA: You probably could have brought them.

The way this usually works is, the way you can tell if you're in trouble is if the Governor's staff starts floating in the room from down there.

[Laughter.]

CHAIRMAN PERATA: Then when Kostigian gets here,
the red light's on.

[Laughter.]

MS. GRUENEICH: Somebody needs to let me know.

CHAIRMAN PERATA: Questions from Members?

1 SENATOR BOWEN: I have a few.

2 CHAIRMAN PERATA: Senator Bowen.

3 SENATOR BOWEN: Thank you.

4 Welcome.

5 MS. GRUENEICH: Thank you.

6 SENATOR BOWEN: Let me start with commission --
7 I have a number of questions, as you might expect.

8 The Public Utilities Commission recently voted to
9 oppose a bill designed to impose conflict-of-interest standards
10 on future commission appointees. It's SB 204 (Bowen).

11 Were you aware that those standards are similar
12 to those imposed currently on members of the Energy Commission?

13 MS. GRUENEICH: I was not aware of that
14 specifically. I understood that while there was some
15 similarities, there were also significant differences from
16 standards imposed on state officials generally.

17 SENATOR BOWEN: They're virtually identical to
18 the restrictions currently in place for the Energy Commission.

19 Do you believe there should be a lower standard
20 for PUC commissioners with regard to conflict-of-interest than
21 for Energy commissioners?

22 MS. GRUENEICH: No, no, I don't.

23 If I could have a moment, my concern about the
24 bill was that I understood that violations would result in a
25 felony, and which might lead to possible imprisonment as well as
26 significant fines.

27 SENATOR BOWEN: Well, I don't know where you got
28 that information because it's not accurate.

1 MS. GRUENEICH: Then I do apologize, and you have
2 my commitment that I will take a look at that right away.

3 SENATOR BOWEN: I'm told that various
4 commissioners believe that, but it's not true, and it does lead
5 me to some concern about how the commission gets information
6 before taking positions on bills.

7 With regard to bills, let me ask about another
8 measure. Senator Escutia is authoring SB 15 this year, which
9 tries to improve public access to commission decisions by
10 requiring a 30-day minimum public review and comment period for
11 alternative decisions published by the PUC, instead of the
12 current 10-day notice.

13 Given the PUC's tendency to adopt alternatives in
14 major cases, why did you vote to oppose this bill?

15 MS. GRUENEICH: Because I felt that there would
16 be instances in which it was important for the commission to act
17 more quickly, and the 30-days' notice might prohibit us from
18 acting in a speedy timeframe.

19 Let me offer one activity or change that I'm
20 trying to do at the commission to avoid the problem that you're
21 talking about, because even in my short time, frankly I am
22 surprised at how many alternates we see.

23 And I think that problem arises because a lot of
24 times the way it's working at the commission is, you have
25 assigned commissioners who are handling cases, and they're
26 primarily focused on the case, and then the rest of the
27 commissioners tend to get involved later in the process.

28 One of the things that I've started doing, and I

1 think that I have the support of my other commissioners as well,
2 is that we have at the commission which are called en bancs,
3 which are hearings that can be held before all five of the
4 commissioners. And traditionally those en bancs are held at the
5 very, very end of major cases. And that's when everybody's put
6 in all the effort into the record, and in fact that's when you
7 have a proposed decision, and it's sort of after that you may
8 find these alternates springing up.

9 And I think a much more sensible approach is to
10 have these en bancs in major policy cases at the start of a
11 case, so that the commissioners as a whole are hearing what are
12 the important policy issues in the case. And they can also have
13 some public discussion at the outset, rather than waiting till
14 the last minute.

15 SENATOR BOWEN: Do you think that 10 days is
16 enough time for public review of an alternate that's completely
17 new and has had no opportunity to be vetted? Because that's the
18 current law without Senator Escutia's bill.

19 MS. GRUENEICH: I think that frankly in most
20 cases it is, because I've lived with that rule for many years,
21 that the record at that stage is well known to most of the folks
22 who are involved in the case. The issues are pretty well
23 defined.

24 As I said, at least in my view, having 30 days
25 would tie the Commission into potentially delaying decisions.

26 I'm happy, though, to work with Senator Escutia's
27 office and see if we can reach any sort of a compromise. But I
28 did feel 30 days was too long.

1 SENATOR BOWEN: I think one of the biggest
2 concerns that people come into my office with, with regard to
3 the commission procedure, is that enormous changes are made with
4 very little opportunity to review the actual language or get
5 into the details of it. Even if people know what the issues are
6 going to be, there may be a completely different method proposed
7 in an alternate.

8 Let's work on one other piece of legislation, and
9 that is AB 1380 (Gordon). The PUC recently voted to withdraw
10 its support for this measure, which is designed to impose
11 restrictions on how telephone companies deal with telephone
12 numbers in order to slow the growth of area code splits by
13 requiring phone companies to justify their requests for blocks
14 of numbers.

15 My understanding is, you voted to withdraw your
16 support for the bill. Why should we not require telephone
17 companies to justify their requests for blocks of numbers?

18 MS. GRUENEICH: The specific action of the
19 commission was that they wanted to review the bill again. And
20 we felt, and I joined in this, was that because we had said that
21 we were reviewing the bill again, we shouldn't have the support
22 position out there.

23 And the reason why I voted to withdraw was that
24 it had been brought to my attention that there were some legal
25 issues with regard to jurisdiction.

26 It is my understanding that we will have the bill
27 before us at our very next commission business meeting. I was
28 told that there was not going to be a problem of waiting that

1 period of time to have another look at the bill. And I'll say,
2 because I am new to this area, I felt that I needed to look at
3 the bill and make sure that I understood it.

4 SENATOR BOWEN: I guess I'm concerned that you
5 would withdraw your support in order to look at this bill, but
6 you had no trouble voting to oppose a bill where you apparently
7 didn't look at it, because your information about the felony
8 provision was incorrect.

9 MS. GRUENEICH: Well, I thought that I had
10 reviewed it adequately and that I had understood the prior bill.
11 And as I said, my commitment to you is to definitely take a look
12 at it, now that I know my information evidently was erroneous.

13 SENATOR BOWEN: As you know, the Public Utilities
14 Commission is required to hand out telephone numbers in blocks
15 of one thousand, but they have to be handed out by rates center.
16 In other words, in the 3-1-0 Area Code, a thousand number block
17 in Santa Monica. It doesn't help if you need numbers in
18 Torrance.

19 One of the benefits of the voice over internet
20 protocol technology is that those numbers are not dependent on
21 rate centers, meaning they don't need whole blocks of a thousand
22 numbers. They can make do with numbers from partially used
23 blocks, which are a major reason that area codes are exhausted
24 early.

25 Is the PUC handing out or assigning numbers to
26 VOIP providers in this manner?

27 MS. GRUENEICH: I honestly don't know the answer
28 to that. But again, I would be happy to look into it.

1 SENATOR BOWEN: The law requires the PUC to apply
2 to the Federal Communications Commission for permission to
3 impose a technology overlay, and requires the PUC to use a
4 technology overlay when an area code has run out of numbers
5 unless it finds another method would be less inconvenient.

6 That law, which was also my bill, is five years
7 old, and the PUC has yet to comply with it. Yet it is pushing
8 ahead with the split in the 3-1-0 Area Code.

9 When would I expect the PUC to comply with the
10 law that I wrote five years ago?

11 MS. GRUENEICH: My understanding is that there is
12 a pending case before the commission in which there has been a
13 petition for modification filed that would, as I understand it,
14 change that commission's decision on the -- that had, I believe,
15 set up the split, and the petition for modification instead
16 asked the commission to do a triggered overlay.

17 SENATOR BOWEN: No, no, no. You're not
18 understanding.

19 The law requires that the PUC apply to the FCC
20 for permission to impose a technology overlay. It's not
21 triggering anything. You're just required to do it.

22 MS. GRUENEICH: And my understanding is that at
23 least in one instance, the FCC has given the commission the
24 ability to do an overlay.

25 SENATOR BOWEN: Yet the PUC actually withdrew the
26 petition that it filed at one point.

27 MS. GRUENEICH: Again, my commitment to you is,
28 this is not an area where I have been assigned a case. As you

1 know, I'm newly getting involved in telecommunications, and I
2 can say it seems like every week I have a new area.

3 I did receive last week my first serious briefing
4 on overlay. And I'm telling you today that I'm committed to
5 look into it, that I am concerned to hear that there was a law
6 passed five years ago, and there's a feeling that the commission
7 has not acted in response to it. And I'll look into it.

8 SENATOR BOWEN: I don't think it's just a
9 feeling. I think the PUC hasn't acted. They basically, I
10 think, have made the argument that because they filed a petition
11 and then withdrew it, they have technically complied with the
12 law.

13 MS. GRUENEICH: Let me say, let's have another
14 conversation about that when I'm a little more
15 knowledgeable.

16 SENATOR BOWEN: All right.

17 Another vote I've been concerned about was your
18 vote to, I believe, withdraw the petition with regard to the
19 state's jurisdiction on voice over internet protocol.

20 We had a lengthy hearing about this when I
21 chaired Senate Energy Committee. One of the concerns is that
22 voice over internet protocol numbers are not required to provide
23 access to 9-1-1 services.

24 There have now been several documented cases of
25 this being a problem, the most recent in Florida where the death
26 of a child occurred because the telephone system was voice over
27 internet protocol, and there was no way for the customer to
28 reach 9-1-1 services.

1 Given the federal government's track record on
2 dealing with consumer protection issues like this, why would the
3 state wait for the federal government, or hope that the federal
4 government would address these issues?

5 MS. GRUENEICH: First of all, the vote that you
6 referred to was taken in executive session. And under the
7 advice that I received, I can tell you my vote, but I am,
8 because it was done in executive session, prohibited from going
9 into detail, but I can go into the rest of your question.

10 Just to clarify, I voted to abstain. I abstained
11 on that vote. I'm sorry. I did vote to withdraw. I abstained
12 on the second vote, which was to argue before the -- in court
13 that there was no jurisdiction.

14 But with regard to your larger question on the E
15 9-1-1, my understanding -- and again I apologize. It's starting
16 off, my understanding is wrong -- was that the FCC in response
17 to obviously those very serious problems, I mean it's in my mind
18 intolerable for people to have phones and think that they can
19 call 9-1-1, and find out too late you can't do it.

20 My understanding was that the FCC was acting
21 essentially on an emergency basis to order, on a national basis
22 that the cell phones would have E 9-1-1 capability.

23 I am more than happy that we look into this to
24 see if, at a state level, we have the jurisdiction to proceed.
25 And it obviously, I think, is a matter that concerns safety, and
26 we can't wait back and have people fighting over this.

27 SENATOR BOWEN: That's just one of the issues
28 with regard to VOIP.

1 Another one is that because VOIP customers do not
2 pay into the fund that is used to support access for deaf and
3 hearing disabled telephone customers, basically as we move to
4 more VOIP lines, we will significantly reduce the funding that
5 is available to provide telecommunication services via TDD to
6 Californians who rely on that fund as a communications method.

7 I'm not aware of any pending federal action on
8 that, and I'm certain that the federal government is not about
9 to help us fund our services for hearing impaired and deaf
10 Californians.

11 What do you propose we do to keep that fund and
12 others? There are other similar public good-type charges,
13 including one that funds, as I'm sure you know, remote access or
14 access in areas where establishing and maintaining just plain
15 old telephone service would not be economical, even in 2005.

16 MS. GRUENEICH: I think it is absolutely
17 paramount that the Commission open a proceeding on universal
18 service, both the funding and the programs. From what I
19 understand, this issue -- the program itself hasn't even been
20 looked into for a number of years. And I've already met with
21 the staff to talk about how soon we could get a proceeding
22 started.

23 I have conveyed to President Peevey that I would
24 like to be the assigned commissioner of that proceeding because
25 I think it is absolutely essential that we look at, as I said,
26 both the funding and the programs. In my mind, the scope of the
27 proceeding needs to look at not -- what needs to be done, and
28 then step back and say, does the commission itself have enough

1 jurisdiction? If not, is this something that we need to come to
2 the Legislature to work with? Is it something that seems to be
3 before the FCC? And if so, what can we mount as a serious
4 strategy to actually get the relief we need from the FCC.

5 So, that's one step, I think, is we need to look
6 at the overall area, and look at how we can ensure the continued
7 funding.

8 The other area is almost the flip side. One of
9 the things that I've done since I've been appointed is to go
10 back and meet personally with the FCC commissioners, because
11 again, while it's not my specialty, I felt that it was important
12 to develop that relationship.

13 And I had always thought, frankly, that
14 California was sort of in the forefront on the, for example, the
15 deaf and disabled telecommunications program and thinking. And
16 one of the FCC commissioners, Commissioner Kopp, has made that
17 essentially his personal interest of his. And he invited me to
18 come when he spoke at a session at the wireless annual technical
19 convention. And I was just --

20 SENATOR BOWEN: Are you sure you really want this
21 job, wireless annual technical convention?

22 MS. GRUENEICH: The annual wireless. You don't
23 even want to know how I approach my cell phone.

24 But what I want to say is, what I was impressed
25 with was the level of effort he was putting in to work with the
26 wireless industry, that they would be developing the next level
27 of cell phones to help the deaf and disabled community. And I
28 looked around the room, and there was not a single person from

1 California there. And I don't know enough; maybe our staff is
2 in contact.

3 But I thought these are areas where in my mind,
4 we've been a bit too complacent, and we need to step out and say
5 where is the technology? And make sure that our programs are
6 getting the most advanced technology to these communities.

7 And that's a personal interest I have, and that's
8 why I certainly intend to get the proceeding started. And I'm
9 going to do my best to be the assigned commissioner.

10 SENATOR BOWEN: I guess I'd like to urge a bit of
11 caution in relying on technology, particularly if it's cell
12 phone coverage for basic communication.

13 As you may recall a few weeks ago in "The
14 Chronicle," there was an interview with the CEO of Verizon who
15 said something like, "Why on earth would people expect their
16 cell phones to work in their houses? The customer has come to
17 expect so much."

18 This is from an industry that is proposing to
19 replace wire line service on one hand, and arguing repeatedly
20 for policies based on that assumption. And then, on the other
21 hand, explaining to people that it's irrational for us to hope
22 that our wireless phones will work in our houses.

23 I think it's an experience that many hearing
24 people have, that they have to go out into the street, or in the
25 bathroom, or on the third floor in the back corner to get a
26 signal.

27 So, I think that we need to be mindful of that.
28 It takes me to the wireless telecommunications customers' Bill

1 of Rights, which is something that was hashed out over a
2 three-year period at the Public Utilities Commission. Another
3 one where I have an interest, because I put a bill on hold to
4 give the commission time to complete a proceeding. I felt it
5 was a better place for that matter.

6 You were on the Public Utilities Commission for
7 less than a month when you voted to suspend it in a manner that
8 means that unless there's an affirmative vote, it will be, in
9 essence, repealed; no Bill of Rights will occur.

10 Can you tell me what's happening now with regard
11 to the wireless customers' Bill of Rights?

12 MS. GRUENEICH: Yes. That was obviously a very
13 difficult decision that I thought a great deal about.

14 And my concern was that we have a viable -- first
15 of all, I'm on record, and I continue to be on record that I
16 think California needs a consumer Bill of Rights. And I think
17 that just as this state is known for being protective of the
18 environment and sensitive to environmental concerns, I believe
19 the state is known for being -- trying to protect its citizens
20 and consumers, and that we shouldn't feel somehow that it's
21 wrong or inappropriate for us to have a consumer Bill of Rights.

22 I felt that when I cast the vote that there were
23 significant enough problems that it wouldn't end up being the
24 type of consumer protection that we needed. I think it was 112
25 out of the 170 carriers had filed for extensions. There was
26 litigation. There were applications for rehearing. When I
27 checked with the staff, there was no plan for enforcement.

28 And I cast my vote because I felt that this would

1 not end up helping the consumers with sort of this whole
2 haphazard approach.

3 I immediately made at the time that I cast the
4 vote a number of commitments of what I would do to make sure
5 that this was not some open ended stay. And I've come through
6 on my commitments, that I held a all-day hearing on
7 telecommunications issues generally to get myself up to speed as
8 quickly as I could. I held a special half-day hearing
9 specifically on the consumer Bill of Rights to understand what
10 issues could be reinstated sooner rather than later, and to
11 understand what were the issues overall.

12 I wrote a letter to Commissioner Kennedy, who is
13 the presiding commissioner, asking that she specifically take
14 comments on what provisions could be reinstated sooner rather
15 than later. And I believe in response to my actions, what she
16 has now done is, she has issued what's called an Assigned
17 Commissioner Ruling, which is proposing to put back in place the
18 consumer Bill of Rights, and also simultaneously to put back in
19 place the underlying rules in that Bill of Rights that are
20 dealing with slamming and cramming.

21 She's taking comments on that now, and I believe
22 we will ready for a commissioner vote. I'm not sure of the
23 timing, but it would either be the end of this month or the
24 beginning of June.

25 And I think that I can take some credit that that
26 is happening, because I was very vocal about we need to move
27 forward.

28 SENATOR BOWEN: Slamming and cramming are illegal

1 under California law. So, I don't think the PUC could repeal
2 those provisions. We did that way back when Diane Martinez was
3 still on the --

4 MS. GRUENEICH: Right. These statutory -- that's
5 true. The statutory sections were never repealed. And in the
6 stay, I put in the specific language that did clarify that the
7 commission would continue to enforce them. There were also
8 rules that were part of the Bill of Rights rules that dealt with
9 slamming and cramming.

10 I am, again, very clear that I don't think
11 we've -- have achieved the point where we need to with simply
12 the steps that are being -- taking place right now. This is,
13 what can we do immediately.

14 That I am continuing to be vocal in my -- I think
15 every time I meet somebody from the telecommunications industry,
16 they can say that I'm really -- my view is, these folks need to
17 get together. And they need to work it out because we need to
18 have something in place, and more than what we have, and it
19 needs to be done by the end of the year.

20 SENATOR BOWEN: As I think about it, slamming is
21 probably not much of an issue with cell phones, because the hand
22 sets tends to be proprietary and locked. And if you buy another
23 carrier's hand set, in all likelihood you can't use it with any
24 other carrier unless you go through an elaborate procedure that
25 most customers aren't equipped to do.

26 My colleagues will be pleased to know I only have
27 one question on energy.

28 In your answers to the Committee's question --

1 this is what happens when you have an ex-policy chair on Rules.

2 [Laughter.]

3 SENATOR BOWEN: In your answer to the
4 Committee's questions, you describe yourself as a cautious
5 supporter of competitive retail energy markets. And you said
6 that you thought a retail market or a direct access market could
7 make positive benefits for customers that choose to stay with
8 the utilities.

9 That has not been our experience in California.
10 Utility customers are still paying higher rates owing to a long
11 internal loan to DA customers, and various other matters.

12 How do you see IOU customers as being benefited
13 from a return to deregulation and direct access?

14 MS. GRUENEICH: What I see is, if the area of
15 direct access were to open up again, and I believe that this is
16 an area in which the Legislature would act first. And I'm not
17 planning on the commission to step into that particular item
18 without further action from the Legislature.

19 But if that were the policy decision made, what I
20 think is the benefit of retail competition that could then lap
21 over to the customers of the utility, who stay with the utility,
22 is that there is increased competition, I think, where there is
23 pressure on the utility to essentially -- not only trying to
24 keep its costs low, but also to try to improve the quality of
25 service. And that's what I was talking about.

26 I fully recognize that there can be all sorts of
27 areas where the system is not designed correctly. You can have
28 problems, and I'm very concerned about that. And if we do go

1 into the area of opening up the market again, it's an area that
2 I will certainly look at closely.

3 SENATOR BOWEN: I know you're knowledgeable in
4 that area.

5 So, you view the benefits then, if I can try to
6 put this, as being contingent on policies that don't allow cost
7 shifting in favor of direct access?

8 MS. GRUENEICH: That's correct.

9 SENATOR BOWEN: Then finally, I guess all of this
10 leads up to a broader question, because most of the measures,
11 issues that I've talked about are ones in which consumer
12 interests have been pitted against a particular industry. That
13 certainly is the case with area code splits, where six or seven
14 years ago, the wireless and wire line companies were saying
15 we're going to run out of telephone numbers in the 3-1-0 Area
16 Code. And now, despite economic growth in that area, we still
17 haven't run out of numbers. There are various other issues.

18 I'd just like to know philosophically what you
19 believe the role of the commission is with regard to consumers
20 and customers of the industries that you deal with vis-a-vis the
21 business interests that are profit making and that serve those
22 customers and consumers?

23 MS. GRUENEICH: I believe that the role of the
24 commission is to protect consumers, and particularly in my mind
25 the consumers that are less able to be represented before the
26 commission.

27 So, I believe that it's first and foremost to
28 protect consumers. In my mind, that includes regulation. The

1 Public Utilities Commission does regulation, and I view myself
2 as a regulator.

3 At the same time, I think that you can often
4 times achieve the best protection and the best regulation by
5 trying to encourage parties to work together and to seek
6 solutions that are not necessarily totally viewed as win-lose.
7 And I'm also particularly attuned to, having practiced before
8 the commission, that almost the worst situation ends up being
9 where it gets so antagonistic that the cases just get bogged
10 down, and it seems like you never get decisions made for months
11 and years. And then it's like, well, who's benefiting from
12 that?

13 So, I also bring with my personal philosophy a
14 whole overlay of process that I think is important.

15 Then the final thing I would add is that I am a
16 personal believer, and it's certainly part of my philosophy,
17 that you can have protection of the consumer that will also be
18 in line with economic growth and sustainability and
19 technological innovation in general. That I try not to be a
20 Pollyanna-ish approach to this, but I am a believer that in many
21 of these situations, it's not totally win-lose.

22 But not to rattle on too much, but first and
23 foremost, I come to this thinking that my responsibility at the
24 commission is really to protect consumers.

25 SENATOR BOWEN: I don't disagree with you on the
26 latter, and I think that in some areas of our economy, we're
27 actually starting to see shifts in the philosophy of the
28 business community.

1 Just this week, General Electric announced that
2 it would take affirmative measures to reduce its greenhouse
3 gases at the same time as it expects a significant amount of
4 growth, which is an enormous shift in the mind set of many of
5 our Fortune 500s, and a place where I think we've seen our
6 competitors move in other countries.

7 In some industries, most notably automotive,
8 we're behind because we're behind. We didn't see the increasing
9 social and environmental and the overall concerns.

10 So, I would implore you, as a member of the
11 commission, to help the industries that you regulate and deal
12 with in other ways, do good by doing well.

13 Thank you for taking some tough questions. You
14 know these issues are very important to me because we all rely
15 so heavily on electricity, water, telecommunications, and the
16 safety of rail.

17 You have an enormous responsibility.

18 MS. GRUENEICH: Thank you.

19 CHAIRMAN PERATA: Senator Battin.

20 SENATOR BATTIN: Thank you, Mr. Chairman.

21 I think I warned you when we talked --

22 MS. GRUENEICH: Yes, you did.

23 SENATOR BATTIN: -- that I was going to ask you
24 about a frustration of mine.

25 During the height of the energy crisis, when we
26 were getting projections and predictions that we would be having
27 blackouts, I introduced a bill, I think it was SB 69 XXX,
28 because it was the Third Special Session. And that bill

1 specifically said that the PUC would use the temperature -- or
2 actually it was the heat index -- in determining who would be
3 blacked out and who would not be blacked out.

4 When I was presenting that bill throughout the
5 Legislature, I made it very clear to the Senators, and Senator
6 Bowen was the Chair of that committee, that there was a zero sum
7 gain here, that for the PUC to do that, that meant that somebody
8 would be blacked out more than others.

9 And the Legislature, knowing that, voted
10 overwhelmingly for that bill.

11 It was very, very important to the people that I
12 represent in the Coachella Valley specifically, where our
13 summers can be over 120 degrees, where typically in really bad
14 summers, inevitably someone perishes because they try to save
15 money, and they turn their air-conditioning off, and they're
16 overwhelmed by the heat. And it's always the elderly that this
17 happens to.

18 There were cases when people had lost their power
19 through some blackouts, and they'd come in, back into their
20 homes, because they were able to get away, and they were finding
21 things melted, you know, in their kitchens.

22 So, it was a very big concern to my constituents,
23 and it was one of the more important bills, I thought, for the
24 people that lived in the extreme climate of the desert in the
25 summer.

26 The bill passed. The Governor signed it. It
27 became law, emphasis on that last word.

28 I was informed then later that the PUC simply

1 chose not to implement the law that the Legislature passed.

2 I find that unacceptable and would like your
3 comments on that.

4 MS. GRUENEICH: My first comment is that I have a
5 remarkable convergence on the Democratic and Republican side
6 about being unhappy with the PUC on laws that are passed and us
7 not implementing that. So, I'm taking this to heart that I'm
8 hearing here two separate instances of concern with the
9 commission not responding adequately to laws.

10 These obviously were before my time, but I make
11 the same pledge that I did to Senator Bowen, which is under my
12 tenure, I will do my best to make sure if a law is passed, we
13 respond. And in my mind even more importantly, have direct
14 contact with the author and the sponsor to see if not just the
15 letter but the intent is also met, because that's part of this
16 relationship, is to do our best.

17 I did check into it, and my understanding was
18 that the commission did issue a report. What I understand from
19 the report is that it concluded it was not technically feasible
20 to try to essentially avoid blackouts to the residents in the
21 high desert area who were particularly at risk.

22 SENATOR BATTIN: High desert, low desert --

23 MS. GRUENEICH: In the desert area.

24 And what I have not done, frankly, is go behind
25 that to see if the conclusions in that report, if there have
26 been any changes so we can essentially have greater
27 protection.

28 In my mind, our first step of where we've got to

1 work is to do everything we can to prevent the possibility of
2 blackouts so that your constituents and other constituents, but
3 particularly vulnerable constituents are not put at risk.

4 SENATOR BATTIN: Well, I appreciate that. We are
5 able to make parts of the grid to be not blacked out. The
6 commission is capable of doing that. If there's a hospital or
7 such, we can say we're not going to black them out.

8 It seems likely to me that if we can specifically
9 within an area say that area is not going to be blacked out,
10 then it's not technically impossible or feasible to determine
11 with a heat index.

12 And it was an important point that we made.

13 And it's not just the Coachella Valley. It is
14 very likely to have, if you have a day where it's 105 degrees in
15 Orange County, where the heat index because the humidity is very
16 high, and it's 110 in the Coachella Valley, the people are more
17 at risk in Orange County than they are in Coachella, and you
18 would have to make the decisions based on the heat index.

19 I didn't buy the PUC saying that suddenly we
20 can't deal with your technical problem; we can deal with all
21 these others.

22 My second response is, the law didn't expire. It
23 wasn't sunsetted. It's still the law, and I would like your
24 commitment that you will work to implement it during your time
25 on the commission.

26 MS. GRUENEICH: You have that commitment.

27 SENATOR BATTIN: I want to switch gears with you
28 and ask you what your opinion about the Diablo Canyon nuclear

1 power plant is?

2 MS. GRUENEICH: In any particular regard, or in
3 general?

4 SENATOR BATTIN: Do you think it's safe? Do you
5 think it should continue operation?

6 MS. GRUENEICH: I think that I'm not qualified to
7 answer whether it's safe, that we have the Nuclear Regulatory
8 Commission who, by law, is the entity that looks at the safety
9 of that plant.

10 And as an attorney, my view is that if somebody
11 has a disagreement with the safety of that plant, they need to
12 go before the NRC and try to convince them otherwise. But
13 absent the NRC saying that the plant is not safe, there is an
14 absolute legal right to run that plant.

15 And I can say, moreover, it is a large enough
16 source of power in this state that there would be some
17 significant questions of reliability if it were shut down.

18 These are the types of things in my mind, not
19 just for this plant, but for many of our large plants. We need
20 to make sure we have robust enough planning that, if there were
21 any unexpected outages at these major plants, that we can keep
22 the lights on.

23 SENATOR BATTIN: In representing one of your
24 clients, did you file a suit at the PUC to prevent PG&E from
25 recovering costs for maintenance of the plant's steam
26 generators?

27 MS. GRUENEICH: That's not accurate, but let me
28 clarify.

1 Prior to my appointment to the commission, I
2 represented a client, the San Luis Obispo Mothers for Peace, as
3 well as I think there were three other environmental groups.
4 And that involved a PUC case in which PG&E was requesting that
5 the ratepayers pay about \$700 million to replace the steam
6 generators at the Diablo Canyon Nuclear power plant.

7 The position that I represented the Mothers for
8 Peace on in that case was not advocating that the plant be shut
9 down. That was not even an issue before the commission.

10 But what we instead argued was that the
11 commission itself needed to take a more in depth look at the
12 cost benefit of what the proposed project was.

13 The commission has since then voted to approve on
14 an interim basis PG&E's request. It was since my appointment to
15 the commission, and I obviously recused myself from any
16 involvement in the decision.

17 SENATOR BATTIN: In the brief -- now you peaked
18 my interest because you said -- we received some letters about
19 this, is why I ask. It says a legal brief, one of your claims
20 was, quote.

21 "In fact, no governmental
22 agency, including this commission
23 or the NRC, has taken hard look
24 at this facility ..."

25 Then to be fair, there's dot, dot, dot. So, I don't know
26 what's in the middle,

27 "... to ensure the DC, Diablo
28 Canyon Nuclear power plant does

1 not pose a substantial risk of
2 danger to the people and the
3 environment of this state."

4 That's rather strong words. I don't know what
5 the dot-dot-dot was.

6 CHAIRMAN PERATA: Mitigating words.

7 [Laughter.]

8 SENATOR BATTIN: Could you expand on that,
9 please?

10 MS. GRUENEICH: First of all, let me say that I
11 was appointed while the case was still before the commission.
12 And my understanding was that after -- I obviously contacted the
13 client and withdrew from representation. And I believe that
14 they have retained another attorney. I've had no contact with
15 the client or the attorney, so I'll be honest that I'm not sure
16 if that was a brief that was filed under my name --

17 SENATOR BATTIN: Your words or their words.

18 MS. GRUENEICH: -- or their words.

19 I can go on if you want, or I can talk later
20 about it, but I'm not actually sure of the timing of that.

21 SENATOR BATTIN: The reason I asked you about it
22 was that it made me concerned that you would have some bias
23 against all or any particular form of energy.

24 I don't have expectations that there'll be the
25 siting of a nuclear power plant in California any time soon, but
26 I would like to make sure that the commissioners of the PUC had
27 an open mind to all types of energy generation, especially since
28 as a state, we don't have excess.

1 I just had a report today in our caucus about the
2 summer, how the summer's going to look. It looks like it's
3 okay, but it has room for lots of problems in terms of having
4 blackouts or not having enough power. As you well know, I'm
5 probably more concerned about that than most people here.

6 So, I just kind of heard other comments about it
7 and had received some correspondence, and I just wanted to make
8 sure that was the case.

9 Let me just ask you the question. Do you have
10 any bias towards any type of energy production, nuclear power
11 specifically?

12 MS. GRUENEICH: No, I do not.

13 Let me say that I -- I look at various different
14 sources of power, and I can see that there are pros and cons
15 that have to be taken into account. For example, with wind
16 power, it doesn't blow all the time, and you've got to think
17 about well, if we're going to be increasing the use of wind in
18 California a lot, we've got to have some real good game plan for
19 what we're doing for power when the wind's not blowing.

20 That, to me, I don't think of it as a bias. I
21 think of it as, you've got to sort of have an understanding.

22 So with nuclear power, what I look at is, again,
23 I think frankly, as you said, we're probably not going to be
24 seeing new nuclear plants in the state. The PUC's jurisdiction
25 is extremely limited. I think that this one case was the only
26 case that I'm aware of in 20 years that's come before the
27 commission on nuclear power.

28 But I don't call it a bias, but what I think I

1 would do is that in any particular technology, I would look at
2 if there are unique aspects of that technology that need to be
3 examined.

4 But you have my commitment that I'm not saying
5 that, oh my God, I need to be out there as an activist, trying
6 to do something about nuclear power in California. In my mind,
7 that's wholly inappropriate for a Commissioner to ever, ever be
8 thinking on those lines.

9 My role is to be doing the best I can to ensure
10 reliable adequate power supplies for California.

11 The citizens of the state, through paying the
12 rates, have made a decision that we do have two operating
13 nuclear power plants in California.

14 SENATOR BATTIN: Last question, change of
15 subject.

16 And please don't feel this is an obligation to
17 talk on this for half an hour, because you could, we could, I
18 know Debra could.

19 There is a policy debate and decision that is
20 coming. We have started discussing it in the Energy and
21 Utilities Committee. It deals with the fight between the cable
22 companies and the phone companies and the satellite companies,
23 which are quiet but ever taking market share from them. Cable
24 wants to be in phone, and phone wants to be in cable, and
25 satellite's taking video, a market share, and don't be surprised
26 one day when they start making phone market share away as well.

27 I won't ask any question other than what you see
28 the future is in that environment? What role the PUC will play

1 as a regulator in that environment? And how closely is the
2 commission looking at this at the moment?

3 MS. GRUENEICH: Sure.

4 I am skeptical that the commission can be very
5 effective in trying to, frankly, change market structures, or
6 sort of where businesses are going to make their business plans
7 in telecommunications. I think that's probably one of the least
8 effective areas that the commission could try to influence.

9 So at least where I am focused on
10 telecommunications and thinking now is, frankly, a more limited
11 role and approach, which is that commission, in my mind, has an
12 obligation to try to make sure. Not just to try to make sure,
13 but to actually make sure that the residents of this state have
14 access to basic telephone service at affordable rates. I mean,
15 that to me -- or affordable cost. That's sort of a basic aspect
16 that, with all these other changes looming around, we've got to
17 keep our focus on, making sure that happens.

18 And then the second aspect is what I did discuss
19 with Senator Bowen, that I'm particularly focused of some of
20 these program under what we call universal service, to think
21 through how are the programs funded; are they essentially
22 focused in the right areas; and with all the changes going on,
23 what are we going to be doing there. And that's sort of the big
24 policy debate that needs to happen. I want it to start
25 happening now.

26 I'll be honest, that's about where my thinking is
27 on telecommunications right now.

28 SENATOR BATTIN: You're new in that area. I'll

1 tell you what, it is going to be a very big issue coming
2 forward. And the Legislature, I think it's going to find its
3 way in front of the commission as well.

4 I just hope that we, as a public policy making
5 body, just don't screw it up, because it is really the future of
6 how we communicate in this country. And I think it ultimately
7 has the potential of benefiting everybody, because the
8 competition will spawn innovation. Things we can't even imagine
9 now will be common place just a few years down the road. And
10 that's going to be our debate here, but it's ultimately going to
11 end up in your hands as well.

12 Thank you, Mr. Chairman. I move the
13 confirmation.

14 CHAIRMAN PERATA: Thank you. You've encouraged
15 Senator Ashburn.

16 SENATOR ASHBURN: Well, Mr. President only to say
17 that Dian Grueneich and I had a lengthy conversation about
18 energy policy, her background, experience, prior to our hearing.

19 I believe she's extraordinarily well qualified,
20 and I'm prepared to vote.

21 CHAIRMAN PERATA: I didn't think I'd see a
22 Democrat of your caliber being appointed by a Republican
23 administration, so I could probably leave it right there.

24 I would at some point appreciate your impressions
25 of the PUC's jurisdiction and how it's acquitting itself in the
26 area of water. I think I hear more about rail than I do about
27 water coming out of that commission. Everybody's got their
28 minds wrapped tightly around energy and telecom. But to

1 paraphrase or misparaphrase James Baldwin, I think the next time
2 it's the water.

3 In a term-limited Legislature, there is no
4 expertise here any longer. And the interests who look out for
5 water oftentimes break down those who have it and those who
6 don't have it.

7 I'd be very specifically interested in if a
8 conservation policy could be spawned over there in San
9 Francisco. Everything else is, what the hell.

10 I'd like to just see by a show of hands anybody
11 who's here in opposition? Great, because that's going to set
12 the tone. All you have to do now is, and as much as you
13 probably rehearsed in front of the mirror, if you'd come up.
14 Otherwise, I'm going to have to give her a break. She wanders
15 off.

16 [Laughter.]

17 CHAIRMAN PERATA: She usually has a couple of
18 shots at Chops. She comes back. The record's a mess.

19 [Laughter.]

20 CHAIRMAN PERATA: If you'll all come forward and
21 introduce yourself, give your name and the position you're
22 taking. Thank you.

23 MR. CAVANAGH: Mr. Chairman, Senators, Ralph
24 Cavanagh, from the Natural Resources Defense Council. Speaking
25 also for the first time today, and almost certainly for the only
26 time in my life for CalEnergy, the Distributed Energy Resources
27 Group, enXco, FPL Energy, Itron, MidAmerican Energy Holdings
28 Company, National Association of Energy Services Companies, Oak

1 Creek Energy, Pacificorp Power Marketing, Quantum Consulting.

2 Senator Battin, every form of energy is on that
3 list.

4 Mr. Chairman, I will simply say that it has long
5 been my view that in this, perhaps the most important economic
6 and environmental and regulatory body at the state level in the
7 United States, the ideal nominee would provide the background
8 and the capabilities of Dian Grueneich. At long last we have
9 such a candidate.

10 Thank you, Mr. Chairman.

11 MS. BERRIO: Good afternoon. Itzel Berrio for
12 the Greenlining Institute.

13 The Greenlining Institute is a consumer advocacy
14 group, and we have 39 members, including minority business
15 associations, community groups, immigrant service groups, and
16 faith-based organizations.

17 I did he rehearse my comments in front of the
18 mirror today, but I won't recite them all for you today. I
19 will just say that we are here in full support of Commissioner
20 Grueneich.

21 Thank you very much.

22 CHAIRMAN PERATA: Thank you.

23 MR. SMITH: Mr. Chair and Members, D.J. Smith,
24 representing --

25 CHAIRMAN PERATA: You're not going to give us
26 your real name?

27 MR. SMITH: I just got off the Bay on your Bay
28 Bridge construction project.

1 I'm here today for the California Large Energy
2 Consumers Association, CLECA, and Pacificorp, the electric
3 utility in the far north end of the state, in strong support of
4 Dian for all the reasons that Ralph just mentioned.

5 CHAIRMAN PERATA: Great, thank you.

6 MR. BRADLEY: Justin Bradley with the Silicon
7 Valley Leadership Group, formerly the Manufacturing Group,
8 representing almost 500 megawatts of loads on peak.

9 Our almost 200 member companies in strong support
10 of Dian Grueneich believe she is balanced and will do a great
11 job of representing customers of all kinds in the State of
12 California.

13 CHAIRMAN PERATA: So you no longer manufacture,
14 you're just leading?

15 [Laughter.]

16 MR. BRADLEY: Yeah, we don't go on the record if
17 I say something, so I'll just nod my head.

18 CHAIRMAN PERATA: Thank you for being here.

19 MR. KALB: Dan Kalb, representing the Union of
20 Concerned Scientists.

21 We've had the good pleasure being able to hire
22 Ms. Grueneich prior to her appointment. Because of that, I want
23 to make sure we disclose that, and also because of that, we have
24 a first-hand experience and knowledge of her professionalism and
25 expertise. I can certainly give her an A+ on both
26 professionalism and expertise.

27 We strongly support her nomination.

28 CHAIRMAN PERATA: Thank you.

1 MS. MALINOWSKI-BALL: Hi. Julee Malinowski-Ball
2 on behalf of the California Biomass Energy Alliance, which is a
3 business association of all of California's solid fuel biomass
4 power producers, and sun ray energy, in strong support.

5 CHAIRMAN PERATA: Thank you.

6 MR. FLORIO: Thank you. Mike Florio, Senior
7 Attorney for TURN, The Utility Reform Network.

8 We are pleased to support one of the most
9 qualified appointees ever to the PUC. And we will make sure she
10 carries through with her commitments on the consumer Bill of
11 Rights.

12 [Laughter.]

13 MS. PHILLIPS: Kathryn Phillips with
14 Environmental Defense.

15 We strongly support.

16 CHAIRMAN PERATA: Thank you.

17 MS. APPLING: I'm Dana Appling, a recent
18 Governor appointee to the Office of Ratepayer Advocates at the
19 Public Utilities Commission.

20 We strongly support Ms. Grueneich's appointment
21 to the commission, and believe and are very confident that at
22 the end of the day, at the end of her term, she will be one of
23 the most consumer friendly advocates on the commission.

24 Thank you.

25 CHAIRMAN PERATA: Thank you.

26 MR. GOVENAR: Mr. Chairman, Scott Govenar on
27 behalf of the California Wind Energy Association in support.

28 CHAIRMAN PERATA: Thank you.

1 MR. SMUTNY-JONES: Mr. Chairman, Jan
2 Smutny-Jones. I'm the Executive Director of IEP.

3 I would like to agree with Mike Florio. I think
4 this is one of the most qualified appointees that's ever
5 appeared before the Senate for this spot. We'd urge your Aye
6 vote.

7 CHAIRMAN PERATA: Thank you.

8 MR. MCFETRIDGE: Mr. Chairman, Duncan McFetridge,
9 representing the Coalition of Utility Employees and the State
10 Pipe Trades Council, in strong support of Ms. Grueneich's
11 nomination.

12 CHAIRMAN PERATA: Thank you.

13 MS. McCUNE: Caitlin McCune, California Labor
14 Federation, here in support.

15 CHAIRMAN PERATA: Thank you.

16 MR. MODISETTE: Dave Modisette with the
17 California Electric Transportation Coalition in support.

18 CHAIRMAN PERATA: Thank you.

19 MR. HODGES: Jim Hodges, the Association of
20 California Community and Energy Services in support.

21 We deliver services to low-income people. She
22 requested and was granted to be the assigned commissioner for
23 low-income issues, and we're pleased by that.

24 CHAIRMAN PERATA: Thank you.

25 MS. ROTHROCK: My name is Dorothy Rothrock. I'm
26 with the California Manufacturers and Technology Association.
27 We're in strong support of Dian.

28 We're very active at the PUC on energy matters

1 particularly. We think she'll lend a lot of credibility and
2 integrity to the agency. We need her going forward as this
3 energy market gets repaired in California.

4 CHAIRMAN PERATA: Thank you.

5 MR. ADAMS: I'm Tom Adams, Board President of the
6 California League of Conservation Voters.

7 Dian is the former CLCV Board President. We of
8 course support her. She'll be wonderful.

9 CHAIRMAN PERATA: Thank you.

10 MR. WHITE: Mr. Chair and Members, John White
11 with the Center for Energy Efficiency Renewable Technology.

12 We strongly support Dian's confirmation.

13 CHAIRMAN PERATA: Thank you.

14 Anybody here in like luke-warm support?

15 [Laughter.]

16 CHAIRMAN PERATA: Well, would you like to close?
17 I didn't say "get even," just close; right?

18 [Laughter.]

19 MS. GRUENEICH: I'm sort of old fashioned,
20 brought up in California, and I just still can't believe my
21 luck that I've had the chance to give this public service. I'd
22 welcome the opportunity to continue at the commission.

23 CHAIRMAN PERATA: I think we're all fortunate,
24 thank you.

25 Please call the roll.

26 SECRETARY WEBB: Ashburn.

27 SENATOR ASHBURN: Aye.

28 SECRETARY WEBB: Ashburn Aye. Bowen.

1 SENATOR BOWEN: Aye.

2 SECRETARY WEBB: Bowen Aye. Battin.

3 SENATOR BATTIN: Aye.

4 SECRETARY WEBB: Battin Aye. Perata.

5 CHAIRMAN PERATA: Aye.

6 SECRETARY WEBB: Perata Aye. Four to zero.

7 CHAIRMAN PERATA: Congratulations, four to zero.

8 MS. GRUENEICH: Thank you.

9 CHAIRMAN PERATA: Our next appointee for
10 confirmation is Gary Kuwabara, Chief Deputy Director, Department
11 of Rehabilitation.

12 Sir.

13 MR. KUWABARA: Thank you, Mr. Chairman.

14 Mr. Chairman, Senators, good afternoon. It's my
15 privilege today to have this opportunity to be before your
16 committee for consideration of my appointment as Chief Deputy
17 Director of the Department of Rehabilitation.

18 I'm honored that Governor Schwarzenegger
19 appointed me to this position to be part of an organization
20 which performs a worthy role providing services that promote
21 self-sufficiency through employment outcomes, independent
22 living, and equality to individuals with disabilities.

23 The position of Chief Deputy Director not only
24 provides advice and consultation to the Director, but also plays
25 a pivotal part in coordinating the multiple program and
26 administrative functions to ensure that the activities of the
27 department are effectively and efficiently executed. I've also
28 heard this referred as keeping the trains running on time.

1 I proudly served over 37 years in public service,
2 which includes 26 years at management and senior management
3 levels. I've served in eight departments during my civil
4 service career, and have performed a broad range of assignments,
5 including Chief Deputy and Acting Director at the California
6 Department of Aging.

7 These diverse experiences have provided me a
8 wealth of history to bring to the Department of Rehabilitation.
9 In my short few months with the department, I have had the
10 exceptional good fortune of working with our Director, Dr.
11 Catherine Campisi, who is extremely expert and well respected by
12 both peers and advocate organizations for her knowledge and
13 experience with issues impacting the disability community. I
14 have gained the priceless benefit of many, many hours of
15 mentoring from her on this issue.

16 I feel that her years of experience and vision,
17 together with my pragmatic approach has proven to be a very
18 positive combination.

19 Additionally, I have the benefit of a senior
20 management team with an accumulation of over 300 years of
21 experience and talent in vocational rehabilitation.

22 I am confident that my breadth of experience will
23 provide leadership that will continue to move the department
24 forward in successfully accomplishing its mission.

25 Finally, I feel honored that I am considered to
26 continue my career in public service to those individuals who
27 are supported and assisted by the California Department of
28 Rehabilitation.

1 Thank you. Open for questions.

2 CHAIRMAN PERATA: Thank you.

3 Senator Battin, any questions?

4 SENATOR BATTIN: Move the nomination.

5 SENATOR ASHBURN: No questions.

6 CHAIRMAN PERATA: Senator Bowen?

7 SENATOR BOWEN: Why do you want this job?

8 MR. KUWABARA: Well, like I say, I have served 37
9 years in civil service. I've served in many --

10 SENATOR BOWEN: So you could retire, and yet
11 you're choosing to do this job instead?

12 MR. KUWABARA: I love the work. I have -- like I
13 said, I've been 37 years in civil service. I've served in
14 things -- I've been at the Department of Finance and dealt with
15 Department of Corrections' budgets, Youth Authority budgets,
16 Mental Health budgets, Alcohol and Drug budgets.

17 SENATOR BOWEN: No wonder you want this job.

18 [Laughter.]

19 MR. KUWABARA: Well, I understand that
20 Corrections is now rehabilitation; that's the new name for it.

21 But then I spent a lot of years, 16 years,
22 working at the Department of Aging. And in those 16 years, I
23 learned a lot about what it means to give service to other
24 people in the state.

25 In particular, I think I accomplished a lot
26 there. I felt I had a need to be out there and work with the
27 clients, not just our contractors. I actually went through our
28 health insurance counselling and advocacy program. I went

1 through the training so I could see what they did at the
2 training.

3 We had an ombudsman program. I took the
4 ombudsman training and went through some nursing homes just to
5 see what it was to be an ombudsman and looking in nursing homes
6 to try to assist the individuals there.

7 I think maybe that was a little destiny. I had
8 my father in a nursing home, and I was able to watch out for him
9 a little bit.

10 And that's where I got a sense of having to help
11 the people of the State of California, and I got the perfect
12 opportunity here with Dr. Campisi and the disability community
13 to provide that same kind of assistance to them.

14 And it's really energized me. I feel like 37
15 years, but I still get up every morning, and I'm glad to go to
16 work. I feel energized to really -- maybe I can do 37 more.

17 [Laughter.]

18 CHAIRMAN PERATA: That was a good answer.

19 Couple of things just about the department.

20 The heart and soul of that department, my
21 experience has been, are the rehab counselors that you have. Is
22 it hard to fill those positions these days?

23 MR. KUWABARA: It's getting a little bit more
24 difficult. We have a recruitment and retention that we're going
25 to have to look at. Right now, with our rehabilitative services
26 administration, they did a review on us. And one of the issues
27 they had with us was that our standard for our rehabilitation
28 counselors doesn't meet their definition of a qualified

1 professional.

2 There are two standards. One, they say, at the
3 state level, that the state had a licensing, or certifying, or
4 registration agency, such as some of the other professions get
5 to license them, that would be an acceptable standard. But
6 having not had that in California, our counselors are just hired
7 by us, they default to their what they call a national standard.
8 And the national standard is anybody that essentially had a
9 masters degree in rehabilitation counseling to sit for the
10 certified rehab counselor position at the commission that
11 certifies them.

12 So, we're working with that. They've given us
13 time to work on a plan with them, which we have to submit to see
14 how we're going to, in California, try to approach getting our
15 counselors to that level.

16 CHAIRMAN PERATA: What's an entry level counselor
17 make?

18 MR. KUWABARA: An entry level counselor starts
19 about 2550, \$2,550. That's Range A.

20 If in fact we do have counselors that come in
21 with some experience, and if they did have a masters, they would
22 start at Range C, which is about 35 or 3700, I believe.

23 CHAIRMAN PERATA: We were able to compare
24 categories now week-to-week-to-week. They're not doing so well.

25 Then I heard something that sounded to me to be
26 absolutely untrue, but probably is true. Do you have to set up
27 a competitive bidding process for any expenditure over \$100?

28 MR. KUWABARA: Well right now, anything under

1 \$100 is small procurements. Up to \$100 and over, there is a
2 quote process. You can get quotes or, it depends on what kind
3 of equipment or materials they want, we might have to solicit
4 bids.

5 But our average range, I think, is -- because
6 we're fairly unique, we're not like a regular department that
7 goes out and purchases commodities, or anything like that. We
8 have a direct relationship with our consumers, so a lot of our
9 procurements are directly buying things for consumers.

10 Like, if we had -- one needed to go out and
11 interview and didn't have the proper attire to make the
12 impression they needed to do to get the job, then we would
13 authorize like maybe a shirt and tie for them to purchase, some
14 place like Sears or Target. Or, we could have other small
15 assistive technology kind of purchases.

16 A lot of ours -- I would say 45 percent of our
17 purchases for our consumers average between 100 and 500. So,
18 what I've been doing --

19 CHAIRMAN PERATA: You've been wasting your time.

20 MR. KUWABARA: Yes, it takes a lot of time to --

21 CHAIRMAN PERATA: Who's requiring this?

22 MR. KUWABARA: That's a General Services
23 procurement.

24 CHAIRMAN PERATA: That's a regulation that
25 they've put in place?

26 MR. KUWABARA: Yes.

27 CHAIRMAN PERATA: They're coming by. We're going
28 to chat with them, too. That's absurd.

1 SENATOR ASHBURN: There is a bill to change
2 that.

3 CHAIRMAN PERATA: Okay, so it's true. We're
4 going to have to rag on somebody.

5 Do you have family here, sir?

6 MR. KUWABARA: Yes, I do.

7 CHAIRMAN PERATA: Would you like to introduce
8 them?

9 MR. KUWABARA: Thank you.

10 My mother here is Mary Kuwabara. This is my
11 daughter, Allisa Kuwabara. And Senator Bowen, she's a resident
12 of your district for ten months out of the year, so please take
13 care of her.

14 CHAIRMAN PERATA: Where's she going to school?

15 MR. KUWABARA: Loyola Marymount.

16 My son was here, and he had to leave because he
17 had some classes. Now, I didn't know whether to be proud of him
18 because he had to go to classes, or not proud of him because
19 didn't stay here and watch his father. But I figured he was
20 pretty sound judgment in going back to school not wasting my
21 money.

22 CHAIRMAN PERATA: There you go.

23 Anybody here that would like to speak in favor?
24 Go ahead.

25 MR. KYSOR: Me?

26 CHAIRMAN PERATA: Yes, you.

27 MR. KYSOR: I couldn't see you pointing at me.
28 Hi, Senators. I'm Dan Kysor. I'm Director of

1 Governmental Affairs for the California Council of the Blind.

2 We see Gary all around our conventions. He's
3 taking active participation in a lot of blind and visually
4 impaired subcommittees. And frankly, I haven't seen a guy like
5 him in long time take such a keen interest.

6 And he says he does a lot of mentoring through
7 Catherine Campisi. I'm not going to say he's wrong, but I've
8 seen him taking a lot of personal interest in our activities,
9 and it's refreshing to see someone like him come up through the
10 ranks and come to rehab.

11 I think he's going to do an excellent job, and
12 the California Council of the Blind strongly supports his
13 confirmation.

14 CHAIRMAN PERATA: Thank you very much.

15 Next speaker.

16 MR. KELCH: Yes, Mr. President, Members, Derrell
17 Kelch with the California Association of Area Agencies on
18 Aging.

19 We're pleased here to support Gary's
20 confirmation.

21 We had the opportunity to work for Gary when he
22 was at the Department of Aging. He mentioned that experience
23 that he had there, and we found him committed.

24 To answer your question, Senator, I think the
25 reason that Gary wants the job is that he's committed to serve
26 and that he is caring.

27 We now have the opportunity to also work with him
28 in this new role because, as Area Agencies on Aging expands out

1 and includes dealing with issues of those with disabilities,
2 this brings us in contact with Gary and the Department of
3 Rehabilitation.

4 So, we want to join others in his support, and we
5 urge that you confirm him.

6 CHAIRMAN PERATA: Thank you.

7 MR. COLLINS: Good afternoon, Mr. Chair. I'm
8 Michael Collins. I'm the Executive Director for the State
9 Independent Living Council. We actually lease an office in the
10 same building as the Department of Aging, and so I spent many
11 years educating Gary about disability and independent living,
12 and he took it well. He found a job in our business.

13 I've also worked with him in other roles as he
14 worked in other agencies in the last eight-and-a-half years that
15 I've been here. But I know him personally, and his integrity,
16 it cannot be matched by anybody that I know in state government,
17 including myself.

18 I hope that you'll recognize that and confirm him
19 here today. Thank you for your support.

20 CHAIRMAN PERATA: Thank you.

21 Yes, ma'am.

22 MS. FARINHA [Through Interpretor]: Good
23 afternoon. My name is Sheri Farinha, and I am the CEO of NorCal
24 Center on Deafness. I'm a community-based organization
25 providing social services directly to deaf and hard of hearing
26 individuals from the "womb to the tomb," quote unquote. And we
27 serve 24 counties, northeastern State of California.

28 NorCal is also a member of the California

1 Coalition of Agencies serving the deaf and hard of hearing for
2 the State of California.

3 Our agencies are here today who are in strong
4 support for your approval of confirmation of Gary Kuwabara. His
5 vision with the Department of Rehab is to work with applicants
6 and community organizations like NorCal Center on Deafness. And
7 we have already seen evidence of this in the last six months, of
8 him coming to our offices on several occasions and learn,
9 hands-on, what our community does, and meeting with our
10 consumers, and meeting and talking with staff and finding out
11 what kind of services that we do.

12 That's a wonderful sign of a true person who has
13 integrity and cares.

14 Mr. Kuwabara, his leadership is combined with Dr.
15 Catherine Campisi, who herself is a role model nationwide in the
16 disability community. And we feel that he will be an
17 outstanding team member.

18 And lastly, I want to say, I think it's very
19 important me to say as well, that you as Legislators who are
20 also our advocates, and nothing makes me more prouder than to
21 see your discussions, and your questions, and your sincere
22 oversight, especially with the recent confirmation, and Senator
23 Bowen's and Senator Battin's questions, and all of you who are
24 watching out for the best interests of deaf and hard of hearing
25 individuals for the State of California. We truly thank you for
26 what you are doing. I don't know if you hear that enough, but
27 thank you.

28 CHAIRMAN PERATA: Thank you.

1 MS. FARINHA: Your support for confirmation for
2 Gary is vital. Thank you.

3 CHAIRMAN PERATA: Thanks to both of you.

4 MS. HERRON [Through Interpretor]: Hello. My
5 name is Diana Herron. And I am a supervisor for a career center
6 and transitional services for the California School for the Deaf
7 in Fremont.

8 And I have had the opportunity to meet Gary
9 Kuwabara last January. And at first, I didn't know why he came
10 to visit our campus. We thought, well, you know, those people
11 are just curious about what deaf people do and what they are
12 like. But it was not that at all. It was a true change of my
13 perception about him after our visit.

14 He's a very interested and caring person, and he
15 asked all the right questions, which is very rare coming from a
16 hearing person, to ask those kinds of questions within our
17 community.

18 And his vision is in the right place, as
19 according to Services for Deaf and Hard of Hearing people. Now
20 he truly understands what deaf people's needs are from the
21 Department of Rehab's perspective.

22 We want to support his confirmation here today.

23 CHAIRMAN PERATA: Thank you.

24 Anyone further?

25 Seeing none, we have a motion to approve the
26 confirmation. Please call the roll.

27 SECRETARY WEBB: Ashburn.

28 SENATOR ASHBURN: Aye.

1 SECRETARY WEBB: Ashburn Aye. Bowen.

2 SENATOR BOWEN: Aye.

3 SECRETARY WEBB: Bowen Aye. Battin.

4 SENATOR BATTIN: Aye.

5 SECRETARY WEBB: Battin Aye. Perata.

6 CHAIRMAN PERATA: Aye.

7 SECRETARY WEBB: Perata Aye. Four to zero.

8 CHAIRMAN PERATA: Congratulations.

9 [Thereupon this portion of the
10 Senate Rules Committee hearing
11 was terminated at approximately
12 3:15 P.M.]

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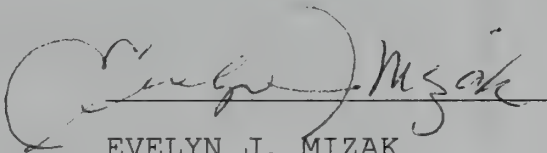
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of May, 2005.


EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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MAR 11 2005

March 9, 2005

The Honorable Don Perata
Chairman, Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814-4900

Dear Senator Perata:

I am writing to respond to the written questions you sent me in advance of my Senate Rules Committee confirmation hearing on my appointment as a Regent of the University of California. Thank you for the questions and the opportunity to make my views known on key issues affecting the University and California higher education. I will answer the questions as presented in your letter of February 21, 2005.

1. *Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as a member of the UC Board of Regents?*

Some of my goals for service as a UC Regent derive from my personal background. As a businessman, I hope to convey to the University many of the things that I have learned that are of importance in running a successful business, such as having a clear vision of where you are headed, maximizing efficiency in your operations, staying focused on outcomes, and a willingness to change directions when called for by changes in the external world.

As a Latino from the Central Valley, my goals include representing this region and all the ethnic and cultural diversity that it represents. I strongly support the University's expansion to underserved areas such as the Central Valley through the development of UC Merced. Similarly, I am a strong advocate for outreach, academic preparation, and other programs that will help expand opportunities for the University's undergraduate and graduate student body as well as its faculty and staff.

I believe my background can help the University sustain itself as a quality organization that continues to meet California's needs.

2. *In the 2004-05 Budget Act, UC negotiated an agreement with the governor on a funding "compact" that envisions student fees rising on an annual basis. What do you believe should be the key features of a student fee policy for UC students? How should the Board of Regents balance a university fee policy that provides students and families with cost predictability from year to year and provides the university with a stable revenue source?*

I have expressed my concern about raising student fees at Regents' meetings. I believe student fees need to be as fair as possible and should only be increased when there is adequate financial aid to ensure that no student is denied access to an education due to his or her financial circumstances. I did vote for the overall UC budget proposal that included a fee increase because I understand the need for the University to offer its students a high quality education.

I think a fee policy should include elements such as moderate and predictable fee increases, advance notification to students and parents of such increases, linkages to increases in financial aid so all needy students can still afford to attend, and a commitment by the state to maintain adequate General Fund support so the choice is not between fees and a reduction in the quality of education. The stability of the fee policy depends on the stability of the University's other revenue sources, particularly state General Fund support.

I do hope that the University and the state can find a way not to reduce the proportion of the fee increase that is dedicated to financial aid and I plan to look at that issue in more detail.

3. *The university recently tightened its eligibility criteria to reduce the pool of UC-eligible students to correspond with the Master Plan for Higher Education policy, specifying that UC draw from the top one-eighth (12.5 percent) of public high school graduates. What impact will this action have on low-income and disadvantaged students who tend not to be the most "competitively eligible" students? How is the university communicating its more stringent eligibility criteria to students, families and K-12 school officials?*

I do not support changes in eligibility requirements that would disproportionately affect underrepresented students and students from geographic areas that are not well represented in the University such as the Central Valley. In fact, I voted against these changes.

I think the first issue that must be addressed in this discussion is growth. Without building new campuses such as UC Merced, these problems of not having spaces for all eligible students will only get worse. With sufficient state resources, I believe that UC can grow and preserve quality at the same time. We could take a greater proportion of the eligible students from underserved areas of the state.

As to your specific question about the recent changes in eligibility, I must agree that it was a difficult decision. It is an unfortunate fact that reducing the size of UC's eligibility pool is likely to disproportionately affect disadvantaged students of all kinds because these students are, as the questioner observes, most likely to be near the "edge" of the pool. However, it is my understanding that UC faculty addressed this problem directly when they debated this and they sought out those methods to reduce the eligibility that would have the least impact on disadvantaged students. Specifically, they chose to make adjustments to the GPA (rather than to test scores, which are much more highly correlated with family income) and they chose to preserve the Eligibility in the Local Context program which had been added as a path to eligibility following the 1996 study that showed only 11.1% of graduates were

meeting the eligibility requirements. I am told that simulations of the effects of these changes to eligibility show that the declines for disadvantaged students will be slight.

Both the UC systemwide office and all of the UC campuses are communicating these changes through a range of widely distributed publications, web-based information, and direct contact—through high school visits, presentations from admissions officers, large counselor conferences that attract many thousands of high school officials every year, and individual letters and e-mails to high school counselors and principals. Having UC Merced in the valley has resulted in greater knowledge and interest than ever before in UC admissions requirements.

4. *What is the appropriate role for UC outreach programs in working with K-12 schools?*

I am a strong supporter of the University's outreach and academic preparation programs in the public schools. The Regents just adopted a statement that such academic preparation is a core part of UC's mission, given the University's land-grant responsibility to address the pressing issues of California. I support all of the efforts that UC currently has in place in the K-12 schools such as the MESA, Puente, Early Academic Outreach, and UC College Prep (AP Online), as well as the academic preparation programs focusing on community college transfers and diversifying graduate education.

These kinds of programs prepare first generation, low-income students attending low-performing schools for success in college through educational partnerships with our colleagues in the CSU, community colleges, and K-12. Students receive direct academic support through Saturday academies, after school programs, test preparation, financial aid, counseling, parent counseling, and one-on-one mentoring. I think UC's role is appropriate and could be enhanced. I support working with our colleagues not just in K-12 but also in the other segments of higher education and with local business and community leaders to create regional alliances to do this work more effectively and efficiently.

I understand funding for these programs is not currently included in the Governor's budget and I urge the Legislature and the Administration to address this issue by continuing the \$17.3 million in one-time funds provided in the 2004-05 state budget to UC for Student Academic Preparation Programs.

5. *In the current year, UC will spend about \$4 billion on sponsored research and scholarly activity. With the passage of Proposition 71, the state will provide an unprecedented sum of \$3 billion in bond funding for stem cell related research. UC is in a position to capture a significant share of this funding. What impact will this new infusion of state resources have on the overall UC research agenda and its capacity to conduct scholarly activity?*

I did not support the proposition that created the stem cell research program. However, as a businessman, I understand the need for the University to position itself to be as competitive as possible for research funding in emerging areas. This is clearly one of those areas.

Under Proposition 71, stem cell research funding will be awarded based on a competitive merit-based peer-review process. UC's faculty includes some of the nation's leading experts in the life sciences and thus UC is in a good position to capture a significant share of the available funding. But, we do need to remember that the stem cell money will be awarded over 10 years, so the amount available in any one year, while very significant, is neither huge compared to the overall research mission of UC nor adequate to meet California's many other research needs.

For that reason and the fact that University of California research is a critical driver of California's economy, I do not believe this research funding should replace or lessen the need for UC research in other fields, such as other areas within medicine and biotechnology, environmental science, information technology, and, of particular interest to me, agricultural research. UC is one of the most successful institutions in the world measured by the support it receives for research—UC brought in about \$2.5 billion in **non-state** research funding in 2003-04. The investment that California makes in the University allows us to hire and retain a stellar faculty. Those faculty, in turn, garner federal and private research support at a level that more than pays for investments that ultimately benefit each of us through the creation of new businesses and industries, improved health care, and enhanced quality of life.

More than 30 percent of UC's state funded research budget goes to agricultural research, which has played a critical role in enhancing the health, nutrition, and welfare of Californians and in strengthening the state's economic competitiveness. As someone from the Central Valley and in the food industry, I strongly support the research UC conducts to increase the quality and quantity of the state's and the nation's food supply. I have seen first hand how important these advances have been to the Central Valley and to my own industry.

I believe it is important to maintain state funding to enable the University to continue to be a leader in agricultural research and be on the cutting edge in a whole host of other disciplines so crucial to California's economic and social progress.

Thank you again for this opportunity to present my views on these important issues. Please do not hesitate to contact me if you need additional information. I look forward to my confirmation hearing with the committee.

Sincerely,



Frederick R. Ruiz
Regent
University of California



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May 6, 2005

The Honorable Don Perata
President Pro Tempore
California State Senate
State Capitol, Room 420
Sacramento, CA 95814-4900

Dear Senator Perata:

Thank you for the opportunity to appear before the Senate Rules Committee regarding my appointment to the Public Utilities Commission. My responses to the questions set forth in your April 28, 2005 letter are as follows:

General Issues/CPUC Process

Q.1. What are your goals and objectives as a commissioner of the Public Utilities Commission? What do you hope to accomplish during your tenure?

My overall goal is to ensure well-functioning, reliable, and reasonably priced utility services for the families and businesses of California, while supporting economic growth for the State. I intend to be a strong advocate for consumers – small and large, a voice for the environment, and a supporter of technological innovation. Equally important, I will be a fair-minded and deliberate judge of the many issues that come before the Commission and foster collegial decision making.

I have been involved in California energy issues for almost 30 years, and I am extremely honored to have the opportunity to provide this significant public service to the people of California. Not only am I well-versed in the complexities of the energy industry, but I understand in detail the nuances of Commission decisionmaking and the need to listen to all points of view as well as to reach out to those ratepayers and consumers who are not well-represented at the Commission.



The Commission faces many challenges as it moves into the 21st century. As a Commissioner, I bring a willingness to examine approaches not taken before. But my consistent goal will be to pursue outcomes that provide consumers in California with affordable utility services, while fostering environmental sustainability, technological innovation, and jobs for Californians. And, all this must be done through processes at the Commission that are objective and fact-based. I am committed to these challenges and objectives and to making the Commission work for all Californians.

The following sets forth specific goals I have in energy, telecommunications, water, transportation, and Commission processes:

Energy:

- Prevent blackouts and exorbitant costs as experienced in 2000/2001. I will support efforts to establish and enforce reserve requirements for all load serving entities. We will also need to continue to plan for and procure adequate, reliable, and reasonably-priced electrical power and natural gas supplies, including energy efficiency investments.
- Keep California not only the national, but the international, leader in energy efficiency. The CPUC's adopted energy efficiency goals for the utilities will cut expected electric demand growth by 60% over the next decade; the natural gas savings over the next decade will equal the consumption of one million households. I intend to be a key leader on energy efficiency for the State of California. I intend to focus on the Commission's requirements for measurement and verification, to ensure the savings are real and persistent and to be a visible proponent for the State's programs. In addition, at my request, I am the Assigned Commissioner for low income energy efficiency programs.
- Protect ratepayers by ensuring that they pay reasonable rates and receive high quality service. Despite the high cost of the Department of Water Resources contracts, I will explore every avenue to keep rates in check. This includes a rigorous review of utility ratemaking and rate design to ensure that rates are transparent; fair and equitable distribution of cost responsibility for departing customers; reasonable and prudent steps to improve the utilities' credit ratings, thus lowering the cost of borrowing; and that utility shareholders also bear their fair share of market risk.
- Ensure that the investor-owned utilities meet and hopefully exceed their obligation to provide 20 percent of supply from renewable resources. Renewables resources are critical to environmental sustainability. I am particularly focused on the construction of transmission needed to develop renewable resources and, particularly, wind resources.
- Approve new transmission infrastructure for the State. We must ensure that there is adequate transmission capacity to alleviate congestion, protect reliability and access new generation, particularly renewable resources.

- Help low income Californians by preserving and expanding affordable rate programs. As the Assigned Commissioner in the California Alternative Rate and Low Income Energy Efficiency proceeding, my goal is to increase the penetration rates for the Commission's low income programs through innovative outreach and education programs. I will also work to ensure that funding levels for these programs are adequate to meet the need, and that the benefits and burdens of these programs are spread fairly and equitably.

Telecommunications:

- I will seek to meet the challenges of rapidly evolving technology, industry consolidation, and international competition while continuing to protect access to low-cost basic telecommunications services.
- I will work to address the digital divide so that all residents and businesses in California have access to the latest telecommunications technology.
- In particular, I intend to reach out to understand the needs of "underserved communities" – low income, non-English speakers, rural areas and the disabled – and to support development of programs that protect the access of these communities to reasonably priced, technologically innovative telecommunication systems.

Water:

- I intend to bring more focus at the Commission level on water issues. The role that the Commission can play with the publicly regulated water utilities that provide water to over 20% of the California population is substantial, and needs to be more of a priority. This is especially true now, because the issues of adequate water supplies, ground water basin reclamation, the clean up of these basins, and who pays for the clean up are becoming more critical.
- The nexus of water and environmental justice issues, such as contaminated water due to MTBE, perchlorate, and other toxins, has a place at the table of the Commission. This is especially true for working communities and communities of color who may experience more of this type of groundwater contamination in their neighborhoods than most other communities.

PUC Processes:

- I am dedicated to decisionmaking based on adequate administrative records, subject to public scrutiny and comment. I will also work for collegial decisionmaking.
- I will increase public input by having more en banc Commission meetings, particularly at the start of Commission cases, to discuss important policy issues facing California.

- Having practiced before the Commission for over 27 years, I bring unique expertise in seeking to make the Commission cases more accessible to the public. The Commission needs to provide electronic access to all filings in its cases and to retool its Website to be more consumer-friendly.
- I intend to focus on better outreach to underserved populations and community based organizations and commit to having workshops and meetings in these communities.

In the mid-1990's, the commission's administrative procedures came under legislative review due to the perception that commission proceedings were not open or accessible to the public. That scrutiny resulted in bipartisan support for AB 2850 (Chapter 1110/1994) and SB 960 (Chapter 856/1995) which, among other things, sought to reform commission procedures.

More recently, parties have complained that information from commission proceedings is increasingly shielded from the public. For example, in the area of utility energy procurement, parties often are required to sign "confidentiality agreements" which bar them from discussing publicly and with the Legislature the details of power purchases.

Q.2. What actions do you support to improve fair, open, and record-based decisions by the commission consistent with statutory policies and due process?

I am a long-time supporter of open, record-based decisionmaking by agencies, including the Commission. I believe that the Commission needs to reform its confidentiality rules to provide greater access to information. The Commission will issue an Order Instituting Rulemaking (OIR) this year to revise its rules on confidentiality of utility information. I will ask to be the Assigned Commissioner on this OIR.

As a former practitioner before the Commission, I have direct experience with the difficulties involved in obtaining access to data. The public has a right to know how its money is being spent and to have the opportunity to participate in Commission proceedings in a meaningful way. As a starting point, the utilities should bear the burden of proving that the release of requested information will cause economic harm rather than shifting the burden to non-utility parties.

I will also ensure that public access to non-privileged meetings involving proceedings before the Commission is not unreasonably denied. For example, Senator Escutia's office expressed a concern to me regarding lack of public attendance at the Low Income Standardization Team meetings. I immediately issued an Assigned Commissioner Ruling requiring public access, even though the Team was not subject to the Bagley-Kenne Act. The Standardization Team responded and these meetings are now open to the public.

Current law, under SB 960, requires commissioners to be present at specified commission proceedings. It also requires the commission to file an annual report on its compliance with those requirements and with other procedural reforms enacted during

the 1990's. The most recent report shows that commissioners were present on less than one of five days in which hearings were held.

Q.3. What actions would you take to ensure your full participation in commission proceedings as required by SB 960?

I take my responsibilities as a commissioner very seriously and I will comply with the letter, as well as the intent, of SB 960 for commissioners to be an integral part of the day-to-day decision-making process. I will be personally involved in the Commission's business and I will seek to hear directly from the public at every opportunity. In the last four months, I have held a half-day all party meeting on the telecommunications Consumer Bill of Rights, an all-day conference on telecommunications issues, and an all-CPUC-staff meeting. I have attended the Low Income Advisory Board meeting and Senator Escutia's May 6 hearing on rail safety, as well as a pre-hearing conference in my first water case. I am having monthly meetings with Commission staff on the low income programs, quarterly meetings of the Low Income Oversight Board, and am directly involved in shaping the direction of these programs.

On important policy questions facing the Commission, the full Commission should have a policy discussion at the outset of the proceeding and not wait until after the evidentiary hearings. For example, in the recent Order Instituting Rulemaking (OIR) on price regulation of the telecommunications industry, I requested that the OIR be modified to include an en banc hearing before the commencement of the evidentiary phase. In this way, the full Commission will have the opportunity to hear from all interested parties, to debate the issues in a public session, and to define the scope of the proceedings.

Similarly, I intend to focus Prehearing Conferences (PHC) at the CPUC on substantive discussions, rather than scheduling items that can be handled via email.

Electricity

As the state's 2000-2001 Energy Crisis illustrated, California is vulnerable to electricity shortages and the ills that accompany them. Californians still pay, on average, the third highest rates in the nation. Hot weather, coupled with other factors including increased economic growth, could reduce reserves to very low levels as early as this summer.

Q.4. What should the commission be doing to assure an adequate and affordable supply of electricity, both for this coming summer and for the longer term? What steps do you support as a commissioner to lower rates, improve energy efficiency, diversify electricity supplies, improve transmission infrastructure, and strengthen system reliability?

The Commission has taken a number of important steps to assure adequate, affordable supplies of electricity for this coming summer and we are engaged in a comprehensive resource adequacy planning process to ensure the adequacy and affordability of such supplies long term. The steps we have already taken to address this coming summer include: the adoption of energy efficiency programs that will potentially reduce peak demand by over 700 megawatts and the addition of 600 megawatts of demand response capacity for this coming summer. Last week, the Commission approved funding for

additional energy efficiency measures in the Southern California Edison service territory for Summer 2005. These additional measures are projected to result in peak demand reduction of 36 megawatts, enough to power 36,000 homes.

We are also working to improve California's long-term electricity supply outlook. Measures to guarantee adequate long-term supply include: a strong continuing commitment to the implementation of the Commission's energy efficiency and renewable energy goals; the adoption, by the end of this year, of detailed criteria to guide utilities in the implementation of the Commission's resource adequacy requirement, which will ensure that the utilities have purchased sufficient resources – at competitive prices – to maintain reliability; review of the utilities' proposals of advanced metering technology that could enable our utilities to offer pricing incentives to customers to shift a significant portion of their electricity demand to off-peak periods; and the adoption of a critical peak pricing program for large customers for the summer of 2006. Finally, as the Commissioner assigned to several new proposed transmission line cases, it is my commitment to do everything within my power to accelerate the Commission's schedule for reviewing these proposals, without sacrificing the public's rights to review these proposals or the required environmental review.

With regard to lowering rates, the State is unfortunately hampered by the Department of Water Resources (DWR) contract commitments. However, I believe that the Commission can and should revise its ratemaking processes to decrease the overall number of different dockets used by the Commission to set rates and to increase the transparency in the rates themselves, as well as to require annual reports by the utilities describing the cost components of current rates and near and mid-term forecasts of future rates.

In the mid-1990's, wholesale electric services were deregulated. Some observers believe that this action was a primary contributor to the energy crisis of the early 2000's, and that the state should return to a "re-regulated" utility-based electricity market structure. Others believe the deregulation scheme adopted in the 1990's was flawed but that it can be remedied through additional market-oriented changes.

Q.5. Please describe your views on the electricity market structure. What, if any, changes to the state's electricity market structure do you support (e.g. re-regulation, "core non-core," direct access models)? How would you ensure that those changes protect residential ratepayers and ensure the financial certainty necessary to support robust utility infrastructure planning and investment for those customers who remain under utility service?

It is essential that the Independent System Operator (ISO) and the State establish strong monitoring and enforcement mechanisms to prevent market manipulation. It is also critical that the Commission maintain a close and cooperative working relationship with the Federal Energy Regulatory Commission (FERC). In the past four months, I have met twice with each FERC Commissioner and intend to be a clear and effective voice for California on these issues in Washington D.C.

On the retail side, I am a cautious supporter of competitive retail markets. In my experience, I have seen a number of educational institutions and businesses reduce and manage their electricity bills through direct access. I believe that a well-designed retail market will also have positive benefits for customers that choose to stay with the utilities, in that fair competition will force the utilities to manage their costs and provide better service. I also support cost responsibility surcharges as necessary to prevent cost-shifting, so long as the surcharges are fair and equitable. All load-serving entities must be subject to the same requirements regarding resource adequacy, renewables, and energy efficiency goals, and careful rules must be adopted regarding "switching" between core and noncore service.

Q.6 The CPUC and other state agencies have challenged the authority of the federal Energy Regulatory Commission (FERC) to assert jurisdiction over certain aspects of electricity regulation, including the Governor's authority to appoint board members to oversee the Independent System Operator. Please describe your views on the role of FERC versus the CPUC in ensuring reliability and affordability of electric services.

Although I support the past actions of the Commission to challenge FERC when FERC overreaches the authority granted to it under federal law, I also believe that the Commission and FERC can work collaboratively and avoid unnecessary jurisdictional squabbles on numerous issues. The potential benefits of such cooperation can be seen in connection with the Commission's recent submittal of favorable comments on Southern California Edison's proposal for a "network upgrade" treatment for new transmission lines that will be necessary to bring up to 4,000 megawatts of renewable wind energy from the Tehachapi area to the state's electricity customers. Based on the Commission's work on this issue, I am encouraged that FERC will view this proposal favorably, even though the acceptance of Edison's proposal will require a change in FERC's established policy.

I am also committed to working closely with the CEC, other states, and FERC on interstate transmission planning for the Western grid and have already begun to participate in such regional efforts.

In 2002, SB 1078 (Chapter 516/2002) enacted into law California's Renewable Portfolio Standard (RPS). Today, three years after the law's enactment, few new renewable energy projects have been built in the state under the new law. Renewable energy advocates complain that the commission has taken too long to implement the law and have made its implementation excessively complex.

Q.7 You have indicated strong support for renewable energy and the state's RPS. What actions will you take to ensure that new renewable energy projects will be built in the state soon and that the program does not become excessively complex?

I am a strong supporter of renewable energy and California's RPS. New and upgraded transmission will be critical to deliver power from renewable generation projects to load. I support proactive efforts by the Commission, as envisioned in the original legislation, to ensure that new renewable projects are built. For example, I am the Assigned

Commissioner on Southern California Edison's Antelope application, which will provide access to wind generation from the Tehachapi region. I am moving proactively on this proceeding, to require sufficient information to be provided in order to complete the necessary environmental and Commission certification review as quickly as we can. I have directed staff to coordinate with the ISO, CEC, and FERC so that duplicative reviews are avoided.

California's RPS legislation is complex, but the Commission succeeded in establishing the policy rules required by SB 1078 within the statutorily-mandated six-month period, and commenced the first RPS solicitation within 18 months of the statute's effective date. We are beginning to see the results: all three IOUs have recently filed, or will shortly file, contracts for new renewable generation. SCE procured approximately 640 GWh per year for 2006, 2007 and 2008. PG&E has submitted contracts for 1,600 GWh per year at approximately 150 MW of capacity. SDG&E's first RPS filing is expected within two months. Commission staff and the utilities are preparing for the second RPS solicitation this summer, while refining policy determinations made last year. The Commission expects that this year's solicitation will move more quickly than last year's, given the extensive learning experienced by all parties, and may conclude by the end of 2005. It will probably make sense for the Commission to gather stakeholder feedback after the 2005 solicitation in order to identify steps that could streamline the process further.

Q.8 Do you believe that the commission has the authority to allow renewable energy credit trading (i.e. unbundled from energy) to be used for purposes of compliance with the RPS? If so, please cite those provisions of law that authorize such trading.

The Commission is currently reviewing the question of legal authority to establish a REC trading system in its RPS proceeding. I cannot violate the Commission's deliberative process or prejudge the outcome of that case by commenting on this question. That said, the current law is not clear, and I expect that the Legislature will address this issue; I do not expect the Commission to take action on this front until the Legislature does so.

I am a proponent of REC trading as a means of satisfying California's RPS mandates as long as there is strict accounting to avoid double-counting of renewable resources, or "paper compliance" without there being real resources behind REC trading. REC trading has the potential to be an efficient means of meeting RPS goals. For example, SCE is close to meeting the 20 percent RPS goal, and it may make economic sense for SCE to move past that level given the amount of renewable resources in Edison's service territory and to trade the excess to another utility. Commission staff has been exploring whether to allow limited inter-utility "swaps" of renewable and non-renewable energy under current law as a compliance option for the 2005 RPS solicitations. This option is not equivalent to a REC trading scheme, because energy, not simply certificates, would change hands. If deliberation by parties suggests such an option is warranted, it must be reviewed by the full Commission, and is likely to apply in only a limited number of RPS transactions.

Q.9 What specific actions do you support to implement the requirements of the RPS for energy service providers?

Pub. Util. Code 399.12(b) requires that Energy Service Providers (ESPs) and Community Choice Aggregators (CCAs) meet the RPS for all load beginning in January 2006. I believe the Legislature should have gone further and applied the RPS mandates to all municipal utilities as well. REC trading would be an appealing option for ESPs but, as discussed above, the Commission's ability to establish REC trading is still being debated. For now, ESPs will have to enter into contractual obligations with renewable suppliers to meet their portion (sometimes very small amounts of energy) of the RPS. The Commission is tackling RPS compliance by ESPs and CCAs in two steps: the initial step, which is ongoing now, addresses the legal threshold questions regarding the Commission's authority to require procurement plans and to enforce RPS compliance. This process is expected to conclude within the next three months. The second step, once the legal threshold has been established, will be to design the specific solicitation and compliance process for ESPs and CCAs. This timing allows the Commission to respond to any further Legislative development of ESP and CCA policy this year, including any REC trading, and will yield a Commission plan for ESP/CCA compliance commencing in 2006, as directed by legislation. I support this process, as well as any additional requirements set by the Legislature.

Natural Gas

Natural gas has increasingly become the state's fuel of choice for generation of electricity. Several companies have proposed siting new liquefied natural gas facilities in, or close to, the state. At the same time, natural gas prices have become volatile and have increased in recent months, raising concerns about over dependency on that fuel source and its impacts on utility bills.

Q.10 What steps do you support to ensure that the state does not become over-reliant on natural gas and to protect against price volatility for the gas usage projected to take place in the state? What steps do you support to ensure that those supplies the state does use are used as efficiently as possible?

I support increasing efforts to reduce natural gas demand, through additional energy efficiency, conservation, and efficiency improvements in gas-burning electric generation. Experience shows that the state's energy efficiency programs are highly effective tools for reducing demand. Residential and commercial sectors usage has remained flat for years even though the economy continues to grow.

The recent increases in gas usage in the State have been associated with the increased use of gas as a power plant fuel; consequently, reducing electricity demand is a critical part of reducing our dependence on natural gas. We can reduce demand by encouraging utilities: (a) to procure more renewable energy; (b) to build or contract for power from new, highly efficient combined cycle power plants, including the repowering of old, existing plants to make them much more efficient; and (c) maximize the savings from energy efficiency.

Reducing demand will go a long way towards stabilizing prices in the natural gas market. Coupled with the demand side strategy, the Commission must also consider the development of new infrastructure, including pipeline capacity, storage, and liquefied natural gas (LNG) terminal in or near California. These are all important ways to increase supply and stabilize gas prices at levels that are lower than the current, historically high prices. Of course, any such LNG terminals must meet the most stringent feasible environmental, safety, and siting requirements. I support the Commission's efforts to obtain concurrent jurisdiction with FERC over LNG siting.

Q.11 What steps do you support that will help address the air quality and other adverse environmental impacts of fossil fuel usage?

As discussed above, I strongly support the development of energy efficiency programs and renewable resources. I also support research into new, clean coal technologies that will allow coal to be gasified and burned as cleanly as natural gas, and that will also incorporate carbon sequestration technology to minimize the emission of greenhouse gases. I would not support contracts between our utilities and the developers of new coal-fired plants unless those plants incorporate state-of-the-art pollution controls to burn coal as cleanly as natural gas, including gasification and carbon sequestration. Even if the coal plants are not physically located in California, we cannot encourage energy development that exports our pollution, including greenhouse gas pollution, to other states. For this reason, I support my Commission, the Energy Commission, the Air Resources Board, the utilities, and the Governor's office working closely together to develop a statewide initiative on the use of clean coal technologies. Through such collaboration, and hopefully with the financial and policy support of the U.S. Department of Energy, we should strive to achieve the twin goals of supporting the highest standards of environmental protection, while being able to generate power using reliable, available domestic fuel sources.

Telecommunications

Questions:

Q.12 In your first meeting as a commissioner in January, you cast the deciding vote to stay the telephone consumer protections ("Consumer Bill of Rights") adopted by the commission in May 2004. Please give your reasons for voting to stay the consumer protection rules.

I voted to stay the Telecommunications Bill of Rights (BOR) because I was very troubled by information I received about the implementation of the BOR. First, 112 of the 170 carriers subject to the BOR had filed extension requests. Technical staff at the Commission confirmed that significant implementation details were still unresolved. Second, many carriers had filed petitions to modify the BOR decision, which would inevitably lead to a review of the Bill of Rights on a piecemeal basis, potentially causing even more confusion and delay. Third, the Commission did not have a plan, backed by adequate staffing and resources, to enforce the BOR.

In order for there to be effective implementation and enforcement of the BOR by the Commission, a majority – and hopefully all – of the currently sitting Commissioners must agree upon the goals of the program, the rules themselves, the implementation schedule, and its ongoing enforcement.

Q.13 The commission has indicated that it intends to revise and reinstate some of the rules before the end of the year. Please describe what steps you support to ensure consumer protection rules will be in place pursuant to this schedule.

In my written concurrence on the BOR suspension, I called for a new BOR and rules by the end of 2005 as well as an immediate review to determine whether any rules could be reinstated on an interim basis. I am not the Assigned Commissioner for the BOR proceeding; therefore, I followed up my concurrence with a letter to the Assigned Commissioner, Susan Kennedy, restating my requests. I also held an all-party meeting on the BOR, including review of the provisions that could be reinstated. Last week, Commissioner Kennedy issued an Assigned Commissioner Ruling (ACR) proposing to immediately reinstate Part I of the BOR in its entirety, and with new additions, as well as portions of the underlying rules in Parts 2, 4 and 5. Under the ACR schedule, the Commission should be able to complete its review of the remaining rules and reach a final decision by December 2005. I intend to personally review the comments filed on the ACR to ensure that the Commission's decision adequately addresses the concerns of all parties.

Although the ACR was an important step in the right direction, I do not view the reinstatement of Part I and the partial reinstatement of the rules as the end of the road, particularly since the majority of the reinstated rules (the slamming and cramming provisions in Parts 4 and 5) are already codified in law. I have repeatedly told telecommunications carriers that my intent is that California will have a strong consumer Bill of Rights, which will include both rules and enforcement provisions. I have also met with the leadership of the trade group for wireless carriers and top management of the major facilities-based carriers to encourage them to work cooperatively to reach a timely and reasonable resolution of the BOR.

I have learned that the Commission bifurcated the BOR case to delay any consideration of consumer education or non-English provisions until resolution of the BOR. I disagree with this approach and believe the Commission should simultaneously address these other issues this year. I would welcome being the Assigned Commissioner on this other phase of the BOR case.

Q.14 The availability of broadband infrastructure and access is becoming an equity, economic development, and revenue issue in state government. The commission recently released a draft report on broadband deployment in California which observed a "digital divide" among the state's population based on ethnicity and income. What specific steps do you support as a commissioner to address this digital divide?

California leads the country in the deployment of broadband resources, and I strongly support the advancement of forward-looking public policies and programs that will use the state's continuing leadership in the deployment of new, advanced telecommunications technologies. In promoting such development, the Commission must assure that lower-

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income Californians, residents of the state's rural areas, and the disabled have full access to these new services. Some of the steps that I support to help bridge this "digital divide" include: the provision of state funds, including monies from the California Teleconnect Fund surcharge on intrastate telephone bills, for computer literacy programs to community-based organizations that serve low-income communities; the provision of state funds (including Public Goods Charge or Universal Service Funds) for a matching grant program to encourage public/private partnerships for the deployment of broadband in low-income communities; the expansion of the Commission's Deaf and Disabled Telecommunications Program to provide subsidized customer premises equipment for broadband and the emerging Voice-over-Internet Protocol technology; the provision of time-limited tax incentives to providers deploying broadband facilities in geographic areas and communities with lower use rates; and the provision of infrastructure grants and low-interest loan guarantees for the construction of broadband facilities to serve areas and communities with lower use rates. The Commission will also consider expanding the definition of basic service to include broadband technology in an upcoming phase of our investigation into Universal Lifeline Telephone Service (ULTS) later this year.

On April 15th, the Los Angeles Times reported that the commission voted to withdraw its legal challenge to federal preemption of states in so-called "voice over internet protocol" (VOIP) services, to reverse its earlier position on this issue, and instead to support FCC preemption of states in this area of regulation.

Q.15 How did you vote on each of these issues? Please explain the reasons for your vote. Do you believe that states have the authority to regulate VOIP services?

The vote on the FCC litigation was in closed session, and I am prohibited by the Bagley-Keene Act from divulging the vote. The LA Times article reported just the vote on the withdrawal of the appeal, and at the subsequent Commission meeting each Commissioner, myself included, explained the basis for their vote on the withdrawal. However, the LA Times did not reveal our votes on whether to support the FCC's position, and I will not divulge that vote here.

I firmly believe that the states should not give up jurisdiction lightly; however, I voted to withdraw the appeal because I do not believe that there is a strong legal argument for state jurisdiction over VOIP services. The fundamental problem is that technological advances have made the regulatory scheme established in the 1996 Telecommunications Act obsolete. The inter-state/intra-state definitions are no longer meaningful, and California should devote its efforts to obtaining meaningful changes in federal law and regulations that will preserve funding for Universal Service for low income, rural and disabled citizens that do not depend on this distinction.

As Commissioner Peevey stated at our April 19 business meeting, the Commission must also proactively seek alternative methods of funding for Universal Service at the state and federal levels. We must advocate strongly for a reasonable resolution. In the wireless industry, the FCC adopted a "safe harbor" that allows states to apply surcharges collect revenue for Universal Service programs on a certain percentage of wireless calls deemed to be intrastate. California must pursue creative compromises on a cooperative basis in order

to preserve Universal Service funding and to create a level playing field for all telecommunications companies that compete for the same customers.

Q.16 What actions do you support to ensure that state programs funded by surcharges on telecommunications rates are not "bypassed" through other technologies and that program funding isn't decreased as a result of this bypass?

As discussed above, technological advances are putting pressure on funding for Universal Service and this Commission's ability to ensure that low-income communities are not left behind as technology advances. I support a review of the Universal Service funding mechanism to ensure that low-income Californians have affordable rates and are given the opportunity to benefit from technological innovation.

The current surcharge method is outdated. As a specific example, a number of Voice Over Internet Protocol (VoIP) services interconnect with, and send traffic to, the public switched telecommunications network. But today, these services are not required to contribute to the funding of the Universal Service program. As these services attract more traffic, funding for state programs is "bypassed". In concert with the FCC, we should revise our Universal Service funding policy to account for IP-enabled services and we should assess Universal Service contributions from IP-enabled service providers. In addition, in concert with the FCC, the Commission should also review the Universal Service contribution methodology and the alternatives of a per-line or per-number surcharge.

Office of Ratepayer Advocates

Q.17 Do you agree with the director of ORA that further institutional and budget reforms need to be undertaken to ensure the effectiveness of ORA? Since the commission itself makes recommendations to the Administration on funding levels for ORA, what actions would you support as a commissioner to ensure that ORA is properly funded to act as an independent voice for ratepayers before the commission and in other forums?

I strongly support the goal of SB 608 to ensure that ORA has the necessary budget and staffing to effectively carry out its mission to protect consumers. I have worked closely with ORA in the past when the division has been a strong and effective voice for consumers and look forward to ORA regaining this role. I also believe that it is necessary for the Commission to protect its staff attorneys from potential conflicts of interest by ORA having its own legal staff.

Rail Safety

Q.18 Do you believe that the commission has sufficient authority and funding to ensure safe railway operations? What actions do you support to improve rail safety?

The Commission recently released a Railroad Safety Action Plan in response to the recent increase in rail accidents. I endorse that plan, including its commitment to seek help from both the state and federal governments to acquire new tools to meet the challenge. Those

tools include changes to state and federal laws, changes in policies at the Federal Railroad Administration, and increased staffing at the CPUC.

The Plan highlights the Commission's lack of sufficient authority and funding to ensure safe railway operations. The 1970 Federal Railroad Safety Act preempted the state's authority by invalidating every state designation of a local safety hazard. This preemption has weakened the CPUC's efforts on rail accident prevention in the areas of training and testing, inspections, and rail crew size. The Commission is supporting legislation at both the federal and state level to expand its jurisdiction.

The Commission is working closely with the Department of Finance, the Senate Budget Committee and the Assembly Budget Committee to evaluate our request for 13 positions to expand the effectiveness of our railroad safety program. We are discussing the need to reinstate three critical positions – an operations supervisor, an equipment inspector, and a track inspector – which were lost due to personnel reductions during 2002-2004. We are also discussing the need for ten new positions comprised of inspectors, accident investigators, analysts, a lawyer, and clerical staff. All 13 of these positions will be used to drive down the numbers of accidents and fatalities by preventing their occurrence. With this increased staffing the CPUC can increase track, equipment and operating practice inspections and expand its citation process for violations of Commission general orders, including requirements for functioning automatic grade crossing equipment.

Conclusion

I hope you find my answers responsive. I look forward to discussing these matters with you on May 11.

Sincerely,



Dian M. Grueneich
Commissioner



DEPARTMENT OF REHABILITATION

Employment, Independence & Equality

Arnold Schwarzenegger, Governor



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Honorable Senator Don Perata, Chairman
Senate Rules Committee
California Legislature
State Capitol Building, Room 420
Sacramento, California 95814-4900

May 3, 2005

Dear Senator Perata:

I am honored to present you and the other members of the Senate Rules Committee this statement of my short and long term goals as the Chief Deputy Director for the Department of Rehabilitation. The areas that I have outlined for you are in keeping with the mission of the Department, which is to work in partnership with consumers and other stakeholders to provide services and advocacy resulting in employment, independent living and equality for individuals with disabilities. Although we all find ourselves struggling to meet the enormous fiscal demands of a state with a multitude of critical issues, I am encouraged and enthused to discover ways in which we can better serve persons with disabilities reach their potential for economic self-sufficiency and pursuit of independent living. The reality that the department impacts and influences the lives of not only persons with disabilities but their families, friends, and the larger community provides the incentive to persist in incorporating my goals with the mission of the Department.

I have proudly served more than 37 years in state civil service, including 26 years at the management and senior management levels. Throughout my public service career I have been guided by the principles and values that my parents have modeled, surviving their internment experience as Japanese Americans, going on to faithfully continue their civic responsibilities upon release. I am also a cancer survivor, which brought into focus for me the value of life and what we can do with it. These experiences have been especially valuable to me in my devotion and inspiration to assist those individuals who are in many instances the most vulnerable in our society -- seniors and the disabled.

I am extremely fortunate and honored to be considered to continue my career in service to those consumers who are supported and assisted by the California Department of Rehabilitation. In my recent months with the Department I have experienced the professionalism and sincere efforts of the staff to empower consumers to promote successful employment outcomes, achieve independent living, and system changes.

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A brief summary of the short and long term goals for the Department of Rehabilitation are presented as follows:

I. Improve level of performance relative to federal standards

I believe one of the critical areas that must receive my attention is achieving the federal evaluation standards and performance measures for state vocational rehabilitation agencies. Each state's level of performance is measured relative to these standards. One indicator which needs improvement, is the percentage of employment outcomes. My prior hands on experience in implementation of statewide senior services provides me with an excellent background to accomplish this goal. Specifically, while Chief Deputy and Acting Director at the Department of Aging, I successfully revised the statewide funding allocation plan for California. One key that helped me to accomplish this was that while I kept a vision of the complete puzzle, I did not forget to focus on how each piece fit to complete it.

The Department of Rehabilitation is comprised of 15 district offices, which are dispersed statewide. The federal standards only measure the average of all the districts. However, each district is unique unto itself. Using a one size fits all approach does not guarantee the desired improvement required in each. I will implement improvement in the percentage of employment outcomes by working with each district to establish individual goals that recognize the specific factors that make each one distinct. Implementing this approach will produce not only the desired improvement, but a quality result. I have already set up separate meetings with each District Administrator to review their individual strategic plan and establish action steps to increase the employment outcome percentage.

II. Increase the number of blind and visually impaired consumers placed in competitive employment

Chapter 1102, Statutes of 2002 (SB 105/Burton) established a separate division within the Department of Rehabilitation, effective July 2003, to address issues concerning the blind and visually impaired and the deaf and hard of hearing. One of the specified areas to be addressed, and on which the Department will report to you later this year, is the improvement of competitive employment placements for blind and visually impaired consumers.

To ensure that improvements in competitive employment for blind and visually impaired are achieved, I will ensure that this is recognized as a priority of the Department. My length of experience in management practice makes me aware that merely verbalizing a priority will not guarantee action. To ensure action, this goal has been prominently included in the strategic plan for this division and will receive constant review with the appropriate level of priority status. Additionally, moving to meet this goal, the Department has provided major counselor training geared to the specific needs of rehabilitation counselors for the blind and deaf based on a needs assessment of core competencies required. One topic included in the training pertained to the use of individual consumer plans for competitive employment. A continued reinforcement of what was learned will dramatically improve competitive employment by clarifying to counseling staff that developing individual plans for employment emphasize

consumer opportunities for competitive employment. I will work with the management of the division to provide instruction ensuring clear definition and priority of this goal to the counseling staff. The ability to work in collaboration with a number of key stakeholders (i.e. consumers, family members, advisory groups, and community programs) has contributed significantly toward moving forward in this direction. I will also continue to utilize this forum to advance the completion of this goal.

III. Improve time staff spend with consumers

Administrative tasks consume valuable counseling time. One task is the procurement of goods and services, which constitute an integral part of successfully fulfilling the consumers Individual Plan for Employment. There are areas which may be modified to reduce time spent in this activity.

I have many years of direct or oversight experience in departmental procurement activities. During my short experience with this Department I have heard many complaints from both field staff and central office staff concerning the time they spend performing procurements. One area I will pursue changing is the dollar limitation placed on bid solicitation requirements for the procuring of small and routine purchases. The Department directly provides services to individual consumers, therefore, many of the purchases involve routine items for consumers purchased on a daily basis (e.g. interview clothing, tools). Many staff hours are spent soliciting bids for these low cost items detracting from time available for direct counseling activity. I will contact appropriate control agencies and vigorously review options that will allow more productivity of our resources. I will also seek to improve the Department's procurement strategy in view of the decentralized field office and district structure. I will implement a pilot project to centralize procurements at the district office level in lieu of at each field office and assess the efficiencies of this change.

IV. Work with the Business Enterprise Program on healthful options

Our Business Enterprise Program for the blind administers food service training, licenses individuals completing training, and provides consulting service to blind consumers participating in our vocational rehabilitation program. These individuals operate vending facilities primarily on state property. This is an opportune time to build partnering relationships with the Business Enterprise Program vendors that want to partner on promotion of healthy product options which can benefit themselves and the state workforce and public customers that utilize their vending operations. There are current vendors who have been successful at integrating healthy food choices for the expanding health conscious customers. I will work with the California Vendor Policy Committee, who represents the statewide Business Enterprise Program vendors, and other state agencies to pursue opportunities which support the efforts to impact nutrition related health issues.

V. Improve use of technology capacity

Consistent leadership is necessary to increase the use of information technology as a tool for more efficient use of Department staff to record and collect consumer information and

generate required reports and data for internal management and federal reporting. I will oversee the preparation and completion of a Feasibility Study Report to compare business practices with available technology options for the implementation of updated systems improvements. This would create long term efficiencies in the way our work is done and provide for enhanced data collection to promote more effective long term planning.

I am not a technology expert but I have had experience in the process of bringing together business process requirements with technical expertise to produce usable systems. I intend to provide executive sponsorship to bring information technology to the department that will enable us to accomplish our mission. My immediate attention is to ensure that the business needs and requirements along with our mission critical functions drive the use of the appropriate technology and not allow the technology to override business needs.

VI. Maintain the quality of rehabilitation staff

A requirement in the Department Federal State Plan is that there is a comprehensive system of personnel development to ensure that consumers in the vocational rehabilitation program receive individualized, comprehensive services from qualified rehabilitation professionals. This federal requirement mandates the development of state level standards for our rehabilitation counselors, which must be equivalent to national standards. My goal is to utilize this requirement as the base plan but expand it beyond merely the compliance requirement. The enhanced plan I will initiate encompasses the retention and recruitment activities that will be necessary for succession planning. The vitality of public vocational rehabilitation will be a result of how successfully the plan is developed and achieved. I will employ my many years of experience working with the state control agencies and bring together the combined expertise of the Department executive management team, which approaches 300 years in the rehabilitation arena, to bring together a complete comprehensive plan.

These are just a few of the many efforts which will be undertaken to further improve the quality of services to the community of individuals with disabilities. I look forward to meeting with you on May 11, 2005. Please feel free to call me at (916) 263-8997, if you would like to discuss these or other Department issues.

Sincerely,



GARY KUWABARA
Chief Deputy Director

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